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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

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- Replace Chapter 44
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- Replace Chapter 57
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- Replace Chapters 63 and 64

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[Created by 2003 Iowa Acts, House File 534, section 2]

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CHAPTER 4 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

11—4.1(8A,22) Definitions. As used in this chapter:

“Confidential record” means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the department is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the department, director, or another person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

“Department” means the department of administrative services.

“Open record” means a record other than a confidential record.

“Personally identifiable information” or *“individual identifiers”* means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

“Record system” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

11—4.2(8A,17A,22) Statement of policy, purpose and scope. The purpose of this chapter is to facilitate broad public access to open records by establishing rules, policies and procedures to implement the fair information practices Act, Iowa Code chapter 22. Chapter 4 seeks to facilitate sound department determinations with respect to the handling of confidential records. The department is committed to complying with Iowa Code chapter 22; department staff shall cooperate with members of the public in implementing the provisions of that chapter.

11—4.3(8A,22) Requests for access to records.

4.3(1) Location of record. A request for access to a record under the jurisdiction of the department shall be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319. The department will forward the request appropriately. If a request for access to a record is misdirected, department personnel will forward the request to the appropriate person within the department.

4.3(2) Office hours. Open records shall be made available during all customary office hours, which are from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

4.3(3) Request for access. Requests for access to open records may be made in writing, by telephone or in person. Requests shall identify the particular records sought by name or other personal identifier and description in order to facilitate the location of the record. Requests shall include the name and address of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

4.3(4) Response to requests. The custodian of records under the jurisdiction of the department is authorized to grant or deny access to a record according to the provisions of this chapter and directions from the department. The decision to grant or deny access may be delegated to one or more designated employees.

Access to an open record shall be granted upon request. Unless the size or nature of the request requires time for compliance, the custodian shall respond to the request as soon as feasible. However,

access to an open record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall promptly inform the requester of the reason for the delay and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that a denial is warranted under Iowa Code subsection 22.8(4) or 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 4.4(8A,17A,22) and other applicable provisions of law.

4.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from department files. The custodian or a designee of the custodian shall supervise examination and copying of department records. Records shall be protected from damage and disorganization.

4.3(6) *Copying.* A reasonable number of copies of an open record may be made in the department's office unless printed copies are available. If copying equipment is not available in the office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere, subject to costs.

4.3(7) *Fees.*

a. When charged. The department is authorized to charge fees in connection with the examination or copying of records in accordance with Iowa Code section 22.3. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for regularly published records and for copies of records supplied by the department shall be posted in the department. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost, as determined by and posted in department offices by the custodian. A charge assessed to a current employee for copies of records in the employee's own official personnel file shall not exceed \$5 per request. When the mailing of copies of records is requested, the actual costs of mailing may be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual department expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in department offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a department clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved, the requester will be advised of this fact. Reasonable search fees may be charged when appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee. Upon completion, the actual fee will be calculated and the difference refunded or collected.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new or pending request for access to records from that requester.

11—4.4(8A,17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the

examination or copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 4.3(8A,22).

4.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority satisfactory to the custodian to secure access to the record.

4.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons alleged to justify access to the confidential record and to provide any proof necessary to establish relevant facts.

4.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases that record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian shall give the subject of that confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of that record the specified period of time during which disclosure will be delayed for that purpose.

4.4(4) *Request denied.* When the custodian denies a request for access to a confidential record, in whole or in part, the custodian shall promptly notify the requester in writing. The denial shall be signed by the custodian of the record and shall include:

- a. The name and title of the person responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record; or
- c. A citation to the statute vesting discretion in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

4.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and shall indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

11—4.5(8A,17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

4.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record under the jurisdiction of the department to members of the public and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection. Failure of a person to request confidential record treatment for all or part of a record does not preclude the department from designating it and treating it as a confidential record.

4.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the director. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question in which portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting such

confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

4.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted information to the department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6) for all or part of that information, the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

4.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of all or part of a record under its jurisdiction to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

4.5(5) *Request granted or deferred.* If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record in which the material in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

4.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may, in good faith, reasonably delay examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

11—4.6(8A,22) Procedure by which a person who is the subject of a record may have additions, dissents, or objections entered into a record. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any department proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

11—4.7(8A,17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record under the jurisdiction of the department may consent to have a copy of the portion of that record concerning the subject disclosed to a third party except as provided in subrule 4.12(1). The consent must be in writing and must identify the particular record that may be disclosed, the particular person or class of persons to whom the record may be disclosed, and, where applicable, the time period during which the record may

be disclosed. The subject and, where applicable, the person to whom the record is to be disclosed, must provide proof of identity.

11—4.8(8A,17A,22) Notice to suppliers of information. When a person is requested to supply information about that person that will become part of a record under the jurisdiction of the department, the department shall notify that person of the use that will be made of the information, which persons outside the department might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of not providing the information requested. This notice may be given in rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

11—4.9(8A,22) Disclosures without the consent of the subject.

4.9(1) Open records are routinely disclosed without the consent of the subject.

4.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 4.10(8A,22) or in any notice for a particular record system.
- b.* To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual following a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative services agency.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

11—4.10(8A,22) Routine use.

4.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. “Routine use” includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

4.10(2) To the extent allowed by law, the following uses are considered routine uses of all records under the jurisdiction of the department:

- a.* Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
- b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the department.
- d.* Transfers of information within the department, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the department is operating a program lawfully.

- f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.
- g.* Distribution of lists of state employees to other than governmental entities.
- h.* Distribution of represented employees' payroll records to unions.

11—4.11(8A,22) Consensual disclosure of confidential records.

4.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rule 4.7(8A,17A,22).

4.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves a record under the jurisdiction of the department may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

11—4.12(8A,22) Release to subject.

4.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 4.6(8A,22). However, the department need not release the following records to the subject:

- a.* The identity of a person providing information to the department when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
- b.* Records that are the work product of an attorney or are otherwise privileged.
- c.* Peace officers' investigative reports except as required by the Iowa Code. (See Iowa Code section 22.7(5).)
- d.* As otherwise authorized by law.

4.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to other subjects in the record.

11—4.13(8A,22) Availability of records.

4.13(1) *Open records.* Department records are open for public inspection and copying unless otherwise provided by rule or law.

4.13(2) *Confidential records.* The following records under the jurisdiction of the department may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. The department is a depository for the records of other public bodies. Records are maintained on paper, audiotape, microform, and electronic information storage and media systems. Although these records are in the physical possession of the department, the responsibility for compliance with Iowa Code chapter 22 remains with the "lawful custodian." The public body requesting creation or storage of the record by the department is the lawful custodian (see Iowa Code section 22.1, definition of "lawful custodian"). All such records are confidentially maintained while in the possession of the department. Requests for access to any such records must be directed to the lawful custodian. Any records maintained by the department concerning the content, location, or disposition of such records are confidential in order to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

- b.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)
- c.* Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (11—subrule 105.19(3), Iowa Administrative Code)
- d.* Tax records made available to the department. (Iowa Code sections 422.20 and 422.72)
- e.* Records which are exempt from disclosure under Iowa Code section 22.7.
- f.* Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- g.* Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e."

h. Those portions of department staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by department staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances of criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the department.

(See Iowa Code sections 17A.2 and 17A.3.)

i. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 602.10112, 622.10 and 622.11, Iowa R. Civ. P. 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law.

j. Reports to government agencies which, if released, would give advantage to competitors and serve no public purpose. (Iowa Code section 22.7)

k. Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code section 321.271)

- (1) However, access shall be granted to those persons authorized by Iowa Code section 321.271.

(2) Pursuant to Iowa Code section 22.7, the lawful custodian may release the following information from peace officers' accident reports even though the reports are confidential: date, time, and location of accident; names of parties to the accident; owners and descriptions of the motor vehicles involved; name of investigating officer; names of injured; locations where motor vehicles and injured were transported; and the identification and owners of damaged property other than motor vehicles.

l. Confidential assignments of state vehicles by the state vehicle dispatcher. These records include letters/memos detailing driver assignments and plate numbers for selected vehicles pursuant to 2003 Iowa Code Supplement section 8A.362, and Iowa Code section 321.19(1).

m. Computer resource security files containing names, identifiers, and passwords of users of computer resources. This file must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

n. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors, and school districts.

o. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making communications to that government body if the communications were available for general public examination. (See Iowa Code section 22.7.)

p. Information contained in records of the centralized employee registry created in Iowa Code chapter 252G, except to the extent that disclosure is authorized pursuant to Iowa Code chapter 252G. (See Iowa Code section 22.7.)

q. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body.

r. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

s. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

- t.* Any other records made confidential by law.

4.13(3) Authority to release confidential records. The department may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 4.4(8A,17A,22). If the

department initially determines that it will release such records, the department may, where appropriate, notify interested persons and withhold the records from inspection as provided in subrule 4.4(3).

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—4.14(8A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifier in record systems as defined in rule 11—4.1(8A,22). Unless otherwise stated, the authority to maintain the record is provided by Iowa Code chapter 8A.

4.14(1) Retrieval. Personal identifiers may be used to retrieve information from any of the systems of records that the department maintains that contain personally identifiable information.

4.14(2) Means of storage. Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

4.14(3) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

4.14(4) Comparison with data from outside the department. Personally identifiable information in systems of records maintained by the department is retrievable through the use of personal identifiers and may be compared with information from outside the department when specified by law. This comparison is allowed in situations including:

a. Determination of any offset of a debtor's income tax refund or rebate for child support recovery or foster care recovery (Iowa Code section 8A.504);

b. Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (Iowa Code section 8A.504);

c. Offset from any tax refund or rebate for any liability owed a state agency (Iowa Code section 8A.504);

d. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (Iowa Code section 8A.504).

4.14(5) Nature and extent. All of the record systems listed in subrule 4.14(6) contain personally identifiable information concerning matters such as income and social security numbers.

4.14(6) Record systems with personally identifiable retrieval. The department maintains the systems or records that contain personally identifiable and confidential information as described in the following paragraphs. The legal authority for the collection of the information is listed with the description or the system.

a. Personnel files. Personnel files are maintained by the department and the employee's appointing authority. An employee may have several files depending on the purpose of the file and the records maintained within the file. Personnel files consist of records that concern individual state employees and their families, as well as applicants for state employment.

(1) Personnel files contain personal, private, and otherwise confidential records related to a state employee's employment, performance and discipline and will be maintained as confidential in accordance with Iowa Code section 22.7(11) and any other applicable law.

(2) These records are collected in accordance with Iowa Code chapters 8A, 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A and are confidential records under Iowa Code section 22.7(11) and other law.

b. Employee payroll records. The payroll records system consists of records that concern individual state employees and their families.

(1) Records under the jurisdiction of the department are collected in accordance with Iowa Code chapters 8A, 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and portions are confidential records under Iowa Code section 22.7 and other law.

(2) These records contain names, social security numbers, and other identifying numbers and are collected in the form of paper, microfilm, tape, and electronic records. Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

c. Vehicle dispatcher files. Vehicle assignments and credit card records may be accessed by personal identifier or by vehicle identification number. Other records which may contain personally

identifiable information, but are not retrievable by it, are: mileage reports, auction information, automobile insurance premiums, pool car billings, departmental billing, motor fuel tax refund, and motor oil claims. Records are stored on paper, electronically, and on microfilm.

d. Capitol complex parking files. The general services enterprise maintains records concerning parking assignments, decals, gate cards, after-hours building passes, parking tickets, departmental parking coordinators, and hearings and appeals. All records except those related to hearings and appeals may be retrieved by personal identifier data. Records related to hearings and appeals are filed by date of hearing only. Records are stored on paper and electronically. Records relating to hearings and appeals are also stored on audio tapes.

e. Annual bid bonds. The printing division maintains a file of annual bid bonds for vendors eligible to bid on printing contracts. The file is alphabetical by vendor name and contains only those papers necessary for execution of the bond. This record is stored on paper only.

f. Telephone directory of state employees. The information technology enterprise maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored on both paper and electronically.

g. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with Iowa Code chapters 8A and 19B, and portions are confidential records under Iowa Code section 22.7. These records contain names, social security numbers, and other identifying numbers and are collected in the form of paper, microfilm, tape, and electronic records. Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

h. Vendor files. The department maintains files of vendors eligible to do business with the state of Iowa. Files may contain applications, vendor information booklets, vendor codes, commodity codes, minority-owned vendor identification information, and mailing lists. Records are stored on paper and electronically.

4.14(7) Releasable information on state employees. The following information that is maintained in the state payroll system or a personnel file shall be released to the public without the consent of the employee because the information is not considered to be confidential information:

- a.* The name and compensation paid to the state employee.
- b.* The dates on which the state employee was employed by state government.
- c.* The position or positions that the state employee holds or has held with state government.
- d.* The state employee's qualifications for the position or positions that the state employee holds or has held including, but not limited to, educational background and work experience.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—4.15(8A,22) Other groups of records. This rule describes groups of records maintained by the department other than record systems retrieved by individual identifiers as defined in rule 4.1(8A,22). The records listed may contain information about individuals. These records are routinely available to the public subject to costs. Unless otherwise designated, the authority for the department to maintain the record is provided by 2003 Iowa Code Supplement chapter 8A. All records may be stored on paper, microfilm, tape or in automated data processing systems unless otherwise noted.

4.15(1) Rule-making records. Official documents executed during the promulgation of department rules and public comments. This information is collected pursuant to Iowa Code chapter 17A.

4.15(2) Board and commission records. Agendas, minutes, and materials presented to boards and commissions within the department are available from the department except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may identify individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records may also be stored on audiotapes.

4.15(3) Publications. Publications include but are not limited to news releases, annual reports, project reports, and newsletters which describe various department programs.

4.15(4) Information about individuals. Department news releases, final project reports, and newsletters may contain information about individuals, including staff or members of boards or commissions.

4.15(5) Statistical reports. Periodic reports of activity for various department programs are available from the department.

4.15(6) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 4.5(8A,17A,22) or subrule 4.13(2). These records, collected under the authority of 2003 Iowa Code Supplement chapter 8A, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, 97A, 97B, 97C, and 509A may contain confidential information about individuals.

4.15(7) Published materials. The department uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws.

4.15(8) Published manuals. The department uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

4.15(9) Mailing lists and contact lists. The department maintains lists including names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public. These lists may be used for distribution of informational material, such as newsletters, policy directives, or educational bulletins. These lists are also used to provide contacts for coordination of services or as reference information sources.

4.15(10) Authorized user lists. The information technology enterprise maintains a list of persons authorized to use their on-line services.

4.15(11) Publication sales files. The general services enterprise maintains records of persons purchasing legal publications. Records are used to produce mailing lists for renewal notification and publication mailings. Records are maintained by ZIP code. These are paper records except for mailing list production.

4.15(12) Bid/purchasing process. The department maintains records of specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, printing orders, supply orders, and correspondence.

4.15(13) Project files. The department maintains plans, specifications, contracts, studies, drawings, photos, blueprints, requests for services, abstracts, lease/rental files, 28E agreements, space administration, and facilities records.

4.15(14) Property/equipment files. The department maintains records of inventory, assignments, distribution, maintenance, requests, operations, shipping/receiving reports, and adjustments.

4.15(15) Education program records. Educational records include a library of training courses and reference materials, a library of course documentation, TSO data sets, Iowa interagency training system, class registrations of state employees, and files of course evaluations.

4.15(16) Data processing files. Data processing files include operations logs, database user requests, job number maintenance/update, data entry format book, integrated data dictionary, computer output forms designations, system software, hardware/software configurations, problem determination/resolution records, and incident reports.

4.15(17) Federal surplus property records. Donee files include applications for eligibility and records of distribution, transfer orders of property from other federal agencies, and auction files. Auction records are filed by auction date only, but award forms may contain names of individuals purchasing property.

4.15(18) Administrative records. Administrative records include the following:

- a. Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.
- b. Correspondence: public, interdepartmental, internal.
- c. Policies and procedures.

- d. Organizational charts or table of authorized positions.
- e. Memberships: professional/technical organizations.
- f. Budget and financial records.
- g. Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, departmental billings.
- h. Requisition of equipment and supplies.

4.15(19) *Legislative files.* Legislative files include pending bills, enrolled bills, legislative proposals, and copies of amendments.

4.15(20) *Printing files.* Printing files include print requisition, plates, negatives, samples, typesetting, artwork, and production logs.

4.15(21) *All other records.* Records are open if not exempted from disclosure by law.

11—4.16(8A,22) Data processing systems. Some of the data processing systems used by this department may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

11—4.17(8A,22) Applicability. This chapter does not:

1. Require the department to index or retrieve records which contain information about a person by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the department that are governed by the regulations of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs unless otherwise provided by law or agreement.
5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. Applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations shall govern the availability of such records to the general public or to any subject individual or party to such litigation or proceedings.

11—4.18(8A) Agency records.

4.18(1) Each agency shall maintain a file of personnel records on each employee and each applicant for employment as specified by the department in rule or policy. All employee and applicant records are under the jurisdiction of the department.

4.18(2) The appointing authority shall give each employee copies of all materials placed in the employee's file unless determined otherwise by the department. The appointing authority shall provide copies of records to the department as requested.

4.18(3) When an employee is transferred, promoted or demoted from one agency to another agency, the employee's personnel records shall be sent to the receiving appointing authority by the former appointing authority.

4.18(4) The director shall prescribe the forms to be used for collecting and recording information on employees and applicants for employment, as well as the procedures for the completion, processing, and release of those forms and records, as well as the information contained on them.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

These rules are intended to implement Iowa Code chapters 8A and 22.

[Filed 12/17/03, Notice 11/12/03—published 1/7/04, effective 2/11/04]

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[Filed ARC 1568C (Notice ARC 1503C, IAB 6/11/14), IAB 8/6/14, effective 9/10/14]

CHAPTER 44
PROFESSIONAL/TRADE DUES DEDUCTIONS
[Prior to 5/12/04, see 701—Ch 204]

11—44.1(70A) General provisions. The state of Iowa may grant eligible professional/trade associations the right to receive dues deductions from state employees through payroll deduction upon presentation of dues deduction authorization forms signed by state employees.

11—44.2(70A) Qualifications. To qualify to receive dues deductions, an association must have and may be required to maintain 100 members or more who are state officers or employees participating in either the centralized payroll system or the department of transportation payroll system. For purposes of meeting the minimum requirements, the association cannot count the enrollment of state officers or employees participating in similar programs that have been authorized by existing Iowa Code sections, by collective bargaining contracts, or by the appropriate governing authority. An association seeking to be qualified must supply officials in charge of each affected payroll system with an alphabetized, certified list of the state employees and their social security numbers for whom dues deductions are being requested. The type of dues being requested and the amount and frequency of the deduction must also be noted.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—44.3(70A) Forms. The administration of dues deductions for qualified professional/trade associations must be done on authorization forms approved by the official in charge of each payroll system.

11—44.4(70A) Deduction limits and frequency. Authorized deductions must be at least \$1. All payroll deductions must be made in equal amounts on a monthly basis, or be made on a basis compatible with the payroll system. Deductions cannot be made for any purpose other than for the payment of dues.

11—44.5(70A) Distribution of literature. The state of Iowa will not distribute literature soliciting for a dues payment payroll deduction or any other matter with payroll materials.

11—44.6(70A) Number of contributions. Each payroll system must allow each employee the opportunity to make a combination of insurance/professional/trade dues deductions to as many as five companies, but no more.

11—44.7(70A) Cash contributions. No cash contributions will be accepted or administered through the payroll process or system.

11—44.8(70A) Terminations. An employee wishing to terminate the deduction shall be required to give 30 days' notice in writing to the appointing authority of the department in which the employee works.

11—44.9(70A) Remittance. The administrator of the payroll system must mail the monthly payment to each company within 20 working days after the last pay date of each calendar month. Support documentation is limited to a listing of employees and the amount deducted.

11—44.10(70A) Solicitation prohibited. Agency rules prohibiting solicitation on state property must be followed by all salespersons or agents.

11—44.11(70A) Annual review of participating employees. During September of each year, each participating association must, if requested by the department, supply officials in charge of each affected payroll system with a certified list of all state employees who have a professional/trade association dues deduction. The list must contain the same information required in rule 11—44.2(70A), as the list will be used by the state to determine if the association continues to have 100 or more employees participating in the program.

If the minimum qualification is not being maintained, written notification may be provided to the association giving it 90 days to meet the minimum qualification. If, at the end of the 90-day period, the minimum qualification has not been attained, the dues deduction for all participating employees for that association may be terminated.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

These rules are intended to implement Iowa Code section 70A.17A.

[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]

[Filed 4/22/04, Notice 3/17/04—published 5/12/04, effective 6/16/04]

[Filed ARC 1568C (Notice ARC 1503C, IAB 6/11/14), IAB 8/6/14, effective 9/10/14]

CHAPTER 52

JOB CLASSIFICATION

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 1/21/04, see 581—Ch 3]

11—52.1(8A) Overall administration.

52.1(1) The director shall prepare, maintain, and revise a classification plan for the executive branch of state government such that positions determined by the director to be similar with respect to kind and level, as well as skill, effort, and responsibility of duties assigned may be included in the same job classification.

52.1(2) The director may add, delete, modify, suspend the use of or subdivide job classifications to suit the needs of the executive branch of state government.

11—52.2(8A) Classification descriptions and guidelines.

52.2(1) Classification descriptions are developed and published by the department as needed. They contain information about the job classification which may include examples of duties and responsibilities assigned, knowledges, abilities and skills required, and qualifications. They may be used by department staff as one of several resources for arriving at position classification decisions.

Classification descriptions are not intended to be all-inclusive. That some duties performed by an incumbent are or are not included in a classification description is in no way to be construed as an indication that a position is or is not assigned to the correct or incorrect job classification. Position classification decisions shall be based upon the preponderance of duties assigned to the position.

52.2(2) Position classification guidelines are developed and published by the department as needed. Their purpose is to document information about the duties and responsibilities that may be typically associated with a job classification or a series of job classifications. They may describe the kind and level of duties assigned, as well as the skill, effort, responsibilities and working conditions associated with job performance. Where the job classification being described is one in a series, the position classification guideline may compare and contrast the similarities and differences among levels in the series.

Position classification guidelines are generally intended for use by department staff as one of several resources that may be used in arriving at position classification decisions.

52.2(3) Nothing in a classification description or a position classification guideline shall limit an appointing authority's ability to assign, add to, delete or otherwise alter the duties of a position.

52.2(4) Changes to the minimum qualifications in a classification description shall have no effect on the status of employees in positions in that class, except where licensure, registration, or certification is changed or newly required.

11—52.3(8A) Position description questionnaires. Position description questionnaires shall be submitted to the director and kept current by the appointing authority on forms prescribed by the director for each position under an appointing authority's jurisdiction. The appointing authority shall assign duties to positions and may add to, delete or alter the duties of positions. An updated position description questionnaire shall be submitted to the department by the appointing authority whenever requested by the director or whenever changes in responsibilities occur that may impact a position's classification. Position description questionnaires are a public record.

11—52.4(8A) Position classification reviews.

52.4(1) The director shall decide the classification of all positions in the executive branch of state government except those specifically determined and provided for by law. Position classification decisions shall be based solely on duties permanently assigned and performed.

52.4(2) Position classification decisions shall be based on documented evidence of the performance of a kind and level of work that is permanently assigned and performed 50 percent or more of the time and that is attributable to a particular job classification.

52.4(3) The director may initiate specific or general position classification reviews. An appointing authority or an incumbent may also submit a request to the director to review a specific position's

classification. When initiated by other than the director, position classification review decisions shall be issued within 60 calendar days after the request is received by the department. If additional information is required by the department, it shall be submitted within 30 calendar days following the date it is requested. Until the requested information is received by the department, the 60-calendar-day review period may be suspended by the department.

52.4(4) Position classification decision.

a. Notice of a position classification review decision shall be given by the department to the incumbent and to the appointing authority.

b. The decision shall become final unless the appointing authority or the incumbent submits a request for reconsideration to the department.

c. The request for reconsideration shall be in writing, state the reasons for the request and the specific classification requested, and must be received in the department within 30 calendar days following the date the decision was issued.

d. The final position classification decision in response to a request for reconsideration shall be issued by the department within 30 calendar days following receipt of the request.

52.4(5) The maximum time periods in the position classification review process may be extended when mutually agreed to in writing by the parties.

52.4(6) Following a final position classification review decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based.

a. A new position description questionnaire must be prepared and all new and substantively changed duties must be identified as such on the new questionnaire.

b. The absence of a showing of substantive changes in duties shall result in the request being returned to the requester.

c. A decision to return a request for failing to show substantive change in duties may be appealed to the classification appeal committee in accordance with 11—52.5(8A).

d. The classification appeal committee shall rule only on the issue of whether a substantive change in duties has been demonstrated by the appellant.

e. The appellant has the burden of proof to show by a preponderance of evidence that there has been a substantive change in duties.

52.4(7) The position classification review process is not a contested case.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—52.5(8A) Classification appeals.

52.5(1) If, following a position classification review request, a decision notice is not issued within the time limit provided for in these rules, or the appointing authority or the incumbent does not agree with the department's final position classification review decision, the appointing authority or the incumbent may request a classification appeal committee hearing. The request shall be in writing and shall be submitted to: Classification Appeal Committee Chair, Department of Administrative Services—Human Resources Enterprise, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case as defined by Iowa Code chapter 17A.

52.5(2) A classification appeal committee shall be appointed by the director.

52.5(3) A request for a classification appeal committee hearing must be in writing, state the reasons for the request and the specific classification requested. The request must be received in the department within 14 calendar days following the date the final position classification review decision notice was or should have been issued by the department.

52.5(4) Hearings.

a. The classification appeal committee shall schedule a hearing pursuant to Iowa Code section 17A.12.

b. All exhibits to be entered into evidence at the hearing shall be exchanged between the parties prior to the hearing.

c. Hearings will be scheduled and the requester will be notified via mail of the date, time and location.

d. The appellant shall carry the burden of proof to show by a preponderance of evidence that the duties of the requested job classification are assigned and carried out on a permanent basis and are performed over 50 percent of the time.

e. The committee shall grant or deny the job classification requested, remand the request to the director for further review, or decide whether there has been a substantive change in duties pursuant to an appeal under subrule 52.4(6) or 52.5(6).

f. The committee's written decision shall be issued within 30 calendar days following the close of the hearing and the receipt of any posthearing submissions. The written decision of the committee shall constitute final agency action.

52.5(5) Requests for rehearing and judicial review of final classification appeal committee decisions shall be in accordance with Iowa Code section 17A.19.

52.5(6) Following a final classification appeal committee decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based.

a. A new position description questionnaire must be prepared, and all new and substantively changed duties must be identified as such on the new questionnaire.

b. The absence of such a showing of substantive changes in duties shall result in the request's being returned to the requester.

c. A decision to return a request for failing to show substantive change in duties as defined in subrule 52.5(7) may be appealed to the classification appeal committee in accordance with 11—52.5(8A).

d. The classification appeal committee shall rule only on the issue of whether a substantive change in duties has been demonstrated by the appellant.

e. The appellant has the burden of proof to show by a preponderance of evidence that there has been a substantive change in duties.

52.5(7) As it relates to subrules 52.4(6) and 52.5(6), the phrase "substantive change" means that sufficient credible evidence exists, in the form of the deletion or addition to the duties in the requester's present classification, that would cause a reasonable person to believe that the duties of the requested classification are assigned and carried out on a permanent basis and are performed over 50 percent of the time.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—52.6(8A) Implementation of position classification decisions.

52.6(1) Position classification changes shall not be retroactive and shall become effective only after approval by the director. Position classification changes approved by the director that are not made effective by the appointing authority within 90 calendar days following the date approved shall be void. Position classification changes that will have a budgetary impact shall not become effective until approved by the department of management. If the appointing authority decides not to implement the change or the department of management does not approve funding for the change, duties commensurate with the current job classification shall be restored by the appointing authority within three pay periods following the date of that decision.

52.6(2) Except where licensure, registration or certification is required, an employee shall not be required to meet the minimum qualifications for the new job classification when a reclassification is the result of the correction of a position classification error, a class or series revision, the gradual evolution of changes in the position, legislative action, or other external forces clearly outside the control of the appointing authority.

52.6(3) An employee in a position covered by merit system provisions shall be required to meet the qualifications for the new job classification when the reclassification is the result of successful completion of an established training period where progression to the next higher level in the job classification series is customary practice, for reasons other than those mentioned in subrule 52.6(2), or when the reclassification is the result of a voluntary or disciplinary demotion. "Completion of an established

training period” shall be the period provided for on the class descriptions for the class. In addition, employees with probationary status must be eligible for certification in accordance with 11—Chapter 58, Iowa Administrative Code.

52.6(4) In all instances of reclassification where licensure, certification, or obtaining a passing score on a test is required, that requirement shall be met by the employee within the time limits set forth by the director. If this requirement is not met, the provisions of rule 11—60.3(8A) shall apply.

52.6(5) Reserved.

52.6(6) If an employee is ineligible to continue in a reclassified position and cannot otherwise be retained, the provisions of 11—Chapter 60, Iowa Administrative Code, regarding reduction in force shall apply.

52.6(7) An employee shall not be reclassified from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee’s written consent regarding the change in merit system coverage. A copy of the written consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapters 19B and 70A.

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¹ Effective date (1/26/83) of 3.4 and 3.7 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

² See IAB Personnel Department

CHAPTER 53

PAY

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 2/18/04, see 581—Ch 4]

11—53.1(8A) Pay plan adoption. The director shall adopt pay plans for all classes and positions in the executive branch of state government, except as otherwise provided for in the Iowa Code.

11—53.2(8A) Pay plan content. Pay plans shall have numbered pay grades showing minimum and maximum salaries.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—53.3(8A) Pay plan review and amendment. The director shall review pay plans at least annually and, taking into account the results of collective bargaining and other factors, may adjust pay ranges or reassign classes to different pay grades.

11—53.4(8A) Pay administration.

53.4(1) Employees. The director shall assign classes to pay plans and grades and shall assign employees to classes. Employees shall be paid at a rate between the minimum and maximum of the pay grade of the class to which the employee is assigned. Pay decisions shall be at the discretion of the appointing authority unless otherwise provided for in this chapter or by the director.

53.4(2) Appointed officials. Unless otherwise provided for in the Iowa Code or these rules, the staff of the governor, full-time board and commission members, department directors, deputy directors, division administrators, independent agency heads and others whose appointments are provided for by law or who are appointed by the governor may be granted pay increases of any amount at any time within the pay grade of the class or position to which appointed.

53.4(3) Total compensation. An employee shall not receive any pay other than that provided for the discharge of assigned duties, unless employed by the state in another capacity or specifically authorized in the Iowa Code, an Act of the general assembly or these rules.

53.4(4) Part-time employment. Pay for part-time employment shall be proportionate to full-time employment and based on hourly rates.

53.4(5) Effective date of changes. All pay changes shall be effective on the first day of a pay period, unless otherwise approved by the director. Original appointments, reemployment and reinstatements shall be effective on the employee's first day of work.

53.4(6) General pay increases. The director shall administer general pay increases for employees that have been authorized by the legislature and approved by the governor. An employee in a position whose pay has been red-circled above the maximum pay rate of the class to which the employee is assigned shall not receive a general pay increase unless specifically authorized by the Acts of the general assembly or otherwise provided for in these rules.

53.4(7) Pay corrections. An employee's pay shall be corrected if it is found to be in violation of these rules or a collective bargaining agreement. Corrections shall be made on the first day of a pay period.

a. Retroactive pay. An employee may receive retroactive pay in the same fiscal year for which the pay should have been paid. A request for retroactive pay must be received and processed no later than August 31 following the close of the fiscal year for which the request is made. Requests for retroactive pay which are not made in a timely fashion must be submitted to the state appeal board.

b. Overpayment and underpayment. If an error results in an employee's being overpaid for wages, except for FICA, state and federal income taxes and IPERS contributions shall be collected. Also, premiums for health, dental and life insurance benefits that have been underpaid shall be subject to collection. An employee may choose to repay the amount from wages in the pay period following discovery of the error or have the overpayment deducted from succeeding pay periods not to exceed the number of pay periods during which the overpayment occurred, or the employee or appointing authority may submit an alternate repayment plan to the director. The repayment plan shall identify the details

of the overpayment, the reasons why the department's recouping the amount of overpayment in the same number of pay periods as those during which the overpayment occurred presents a hardship to the employee, and the terms of the alternate repayment plan. The director shall notify the appointing authority of the decision on the alternate repayment plan. If the employee separates from employment, the amount remaining shall be deducted from wages, vacation payout, applicable sick leave payout and any wage correction payback from IPERS. The collection of overpaid wages shall not result in reducing the employee's pay below relevant state and federal minimum wage statutes for each hour actually worked during the pay period in which the collection of overpaid wages occurs.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—53.5(8A) Appointment rates. An employee shall be paid at the minimum pay rate for the class to which appointed, except in the following instances:

53.5(1) Individual advanced appointment rate. For new hires, reinstatements, or promotions of employees in contract classes, the appointing authority may request pay in excess of the minimum based on education and experience directly related to duties that exceed the minimum qualifications of the class. The appointing authority shall maintain a written record of the justification for the advanced appointment rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate. Individual advanced appointment rates are subject to prior approval by the department.

53.5(2) Blanket advanced rate. If there is a scarcity of applicants, an appointing authority may submit a written request to the director documenting the economic or employment conditions that make employment at the minimum pay rate for a class unlikely. The director may authorize appointments beyond the minimum rate for the class as a whole or in a specific geographical area. All current employees and new or promoted employees under the same conditions and in the same class shall be paid the higher rate. This rate shall remain in effect until rescinded by the director.

53.5(3) Trainee. Rescinded IAB 1/28/04, effective 3/24/04.

53.5(4) Internship. Rescinded IAB 1/28/04, effective 3/24/04.

53.5(5) Temporary, seasonal, and internship. When an appointment is made to a class on a temporary, seasonal, or internship basis, the employee may be paid at any rate within the pay grade to which the class is assigned. Such employees may be given authorized, noncontract salary, across-the-board adjustments within the minimum and maximum rates of the pay grade. Temporary, seasonal and internship employees are not eligible for within-grade increases based on performance or time in service.

53.5(6) Overlap. When an appointment is made on an overlap basis, the employee shall be paid in accordance with this chapter.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—53.6(8A) Payroll transactions.

53.6(1) Pay at least at minimum. If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee shall be paid at least the minimum pay rate of the class to which assigned, except as provided in subrules 53.5(3) and 53.5(4).

53.6(2) Pay not to exceed maximum. If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee's pay shall not exceed the maximum pay rate of the class to which assigned, except as provided in subrule 53.6(3) or 53.6(13) or rule 53.8(8A).

53.6(3) Red-circling. If the pay of an employee in a noncontract class exceeds the maximum pay for the class to which assigned, the employee's pay may be maintained (red-circled) above the maximum for up to one year. Requests to change the time period or the red-circled rate must first be submitted to the director for approval. If approved, the appointing authority shall notify the employee in writing of any changes in the time period and the pay. If an employee's classification or agency changes, a request to rescind the red-circling may be submitted by the appointing authority to the director for approval. The director may also require red-circling in certain instances.

53.6(4) Pay plan changes. If a transaction results in an employee's being paid from a different pay plan, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1)

and 53.6(2). For demotions, the employee's pay shall be at the discretion of the appointing authority so long as the employee's pay is not greater than it was prior to the demotion. For setting eligibility dates, see subrule 53.7(5).

53.6(5) Pay grade changes. If a transaction results in an employee in a noncontract class being paid in a higher pay grade, the employee's pay may be increased by up to 5 percent for each grade above the employee's current pay grade, except as provided in subrules 53.6(1) and 53.6(2). The implementation of pay grade changes for employees in contract classes shall be negotiated with the applicable collective bargaining representative. For setting eligibility dates, see subrule 53.7(5).

53.6(6) Promotion. For setting eligibility dates, see subrule 53.7(5).

a. Noncontract classes. If an employee is promoted to a noncontract class, the employee may be paid at any rate in the pay grade of the pay plan to which the employee's new class is assigned, except as provided in subrules 53.6(1) and 53.6(2).

b. Contract classes. If an employee is promoted to a contract-covered class, the employee shall receive a 5 percent pay increase, except as provided in subrules 53.5(1), 53.6(1), 53.6(2), and 53.6(4).

c. Leadworker. If an employee who is receiving additional pay for leadworker duties is promoted, the pay increase shall be calculated using the employee's new base pay plus the leadworker pay.

53.6(7) Demotion. If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any pay rate that does not exceed the employee's pay at the time of demotion, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4). For setting eligibility dates, see subrule 53.7(5).

53.6(8) Transfer. If an employee transfers under these rules to a different class, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4).

53.6(9) Reclassification. If an employee's position is reclassified, the employee shall be paid as provided for in subrule 53.6(6), 53.6(7) or 53.6(8), whichever is applicable. For setting eligibility dates, see subrule 53.7(5).

53.6(10) Return from leave. If an employee returns from an authorized leave, the employee shall be paid at the same pay rate as prior to the leave, including any pay grade, pay plan, class or general salary increases for which the employee would have been eligible if not on leave, except as provided for in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

53.6(11) Recall. If an employee is recalled in accordance with 11—subrule 60.3(6), the employee shall be paid at the same step or pay rate as when laid off or bumped, including any pay grade, pay plan, class or general salary increases, except as provided in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

53.6(12) Reinstatement. Rescinded IAB 8/6/14, effective 9/10/14.

53.6(13) Change of duty station. If an employee is promoted, reassigned or voluntarily demoted at the convenience of the appointing authority and a change in duty station beyond 25 miles is required, the employee may receive a one-step or up to 5 percent pay increase. The pay may exceed the maximum pay for the class to which assigned. Notice must first be given to the director. Subsequent changes in duty station may result in the additional pay being removed.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—53.7(8A) Within grade increases.

53.7(1) General. An employee, upon completion of a minimum pay increase eligibility period, may receive a periodic increase in base pay that is within the pay grade and pay plan of the class to which the employee is assigned.

a. Pay increase eligibility periods. The minimum pay increase eligibility period for employees shall be 52 weeks, except that it shall be 26 weeks for new hires and employees who receive an increase in base pay as a result of a promotion, reclassification or pay grade change.

b. Noncreditable periods. Except for required educational and military leave, periods of leave without pay exceeding 30 calendar days shall not count toward an employee's pay increase eligibility period.

c. Reduction of time periods. The director may authorize a reduction in the pay increase eligibility periods for a position where there is an unusual recruitment and retention circumstance.

53.7(2) *Noncontract classes.* An employee in a noncontract class may be given any amount of within grade pay increase up to the maximum pay rate for the employee's class. The pay increase shall be at the beginning of the pay period following completion of the employee's prescribed minimum pay increase eligibility period and shall not be retroactive, except as provided for in subrule 53.4(7).

a. Performance. Within grade pay increases shall be based on performance, are not automatic, and may be delayed beyond completion of the employee's minimum pay increase eligibility period. To be eligible, a within grade pay increase must be accompanied by a current performance evaluation on which the employee received a rating of at least "meets job expectations." Time spent on required educational or military leave shall be considered to "meet job expectations."

b. Lump sum. When budgetary conditions make it infeasible to grant within grade pay increases, an appointing authority may instead grant a lump sum increase. The increase shall not be added to the employee's base pay and shall be allowed only once in a fiscal year. Lump sum pay increases must be requested in writing from the director.

53.7(3) *Contract classes.* Within grade pay increases for employees in contract classes shall be in accordance with the terms of their collective bargaining agreement.

53.7(4) *Certified teachers.* Within grade pay increases for employees who are required to possess a current valid teaching certificate with appropriate endorsements and approvals by the Iowa department of education shall be based on length of service, performance and credentials.

53.7(5) *Eligibility dates.* An employee's pay increase eligibility date shall be set at the time of hire, and if the employee starts on the first working day of the pay period, it shall be the first day of the pay period following completion of the employee's minimum pay increase eligibility period. Otherwise, it shall be the first day of the pay period following the date the employee starts work.

a. General. A new eligibility date shall be set when an employee receives an increase in base pay, except when transferring in the same pay grade to a different pay plan. Such date will be set at 52 weeks, except for new hires and employees who receive a pay increase as a result of a promotion, reclassification or pay grade change. The date for such employees shall be 26 weeks following the effective date of the action.

b. Bumping. An employee who is recalled to a class from which the employee was bumped shall have a new eligibility date set if the pay increase eligibility period of the class to which recalled is less than the employee's current pay increase eligibility period.

c. No adjustment for educational or military leave. An employee who returns to work from required educational or military leave shall have the employee's eligibility date restored without adjusting for the period of absence.

d. Adjustments for returning from leave or recall. An employee who returns to work from a recall list or from an authorized leave of absence shall have the employee's eligibility date restored, but adjusted for the period of absence that exceeds 30 calendar days.

e. Administrative changes. The director may change eligibility dates when economic or other pay adjustments are made to the classification plan or pay plans.

53.7(6) *Suspension.* If within grade pay increases are suspended by an Act of the general assembly, the rules that provide for such increases shall also be suspended.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—53.8(8A) *Temporary assignments.* Requests to provide employees with additional pay for temporary assignments shall first be submitted in writing to the director for review and indicate the reason and period of time required, if applicable. This pay may exceed the maximum for the employee's class. If temporary assignments are terminated or the duties removed, the additional pay shall also end.

53.8(1) *Leadworker.* An employee who is temporarily assigned lead work duties, as defined in rule 11—50.1(8A), may be given additional pay of up to 15 percent unless otherwise provided in an applicable collective bargaining agreement.

53.8(2) *Special duty.* An employee who is temporarily assigned to a vacant position in a class with a higher pay grade may be given additional pay equal to that provided in paragraph "a" or "b" of subrule 53.6(6), whichever is applicable.

53.8(3) *Extraordinary duty.* An employee who is temporarily assigned higher level duties, including supervisory duties, may be given additional pay in step or percent increments.

53.8(4) *Effect on within grade increases.* Temporary assignments shall not affect an employee's eligibility for within grade pay increases, and the additional pay amount shall be recalculated whenever a within grade pay increase is granted. The class to which the employee is temporarily assigned shall be controlling for purposes of overtime, shift differential, standby and call back pay.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—53.9(8A) Special pay.

53.9(1) *Shift differential.* If an overtime eligible employee in a noncontract class works for an appointing authority whose operations require other than a day shift, the employee shall receive a shift differential if scheduled to work four or more hours between 6 p.m. and 6 a.m. for two or more consecutive workweeks, or is regularly assigned to rotate shifts. The amount of the shift differential shall be determined by the director and paid in cents per hour. There shall be one rate for the 6 p.m. to midnight time period and another higher rate for the midnight to 6 a.m. time period. Employees who work in both time periods shall be paid at the rate applicable to the period in which the majority of their hours are worked. Employees who work equal amounts in both time periods shall be paid at the higher rate. The differential shall be in addition to the employee's regular base pay and shall be paid for all hours in pay status.

Employees in overtime exempt noncontract classes may receive a shift differential if a request is first submitted in writing and approved by the director. Shift differential for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

53.9(2) *Call back.* If an overtime eligible employee in a noncontract class is directed to report to work during unscheduled hours that are not contiguous to the beginning or the end of the employee's assigned shift, the employee shall be paid a minimum of three hours. These hours shall be considered as hours worked for purposes of determining overtime, but shall not count as standby hours if the employee is in standby status. Employees in overtime exempt noncontract classes may be eligible for call back pay, if a request is first submitted in writing and approved by the director.

Call back for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

53.9(3) *Standby.* If an employee in an overtime eligible noncontract class is directed to be on standby after the end of the employee's shift, the employee shall be paid 10 percent of the employee's hourly pay rate for each hour in a standby status. If required to be on standby, an employee shall receive at least one hour of standby pay. Time spent working while on standby shall not count in determining standby pay, nor shall standby hours count for purposes of determining overtime. Employees in overtime exempt classes may be eligible for standby pay if a request is first submitted in writing and approved by the director. Standby for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

53.9(4) *Discretionary payments.* A lump sum payment for exceptional job performance may be given to an employee. A written explanation setting forth the reasons shall first be submitted to the director for approval.

53.9(5) *Recruitment or retention payments.* A payment to a job applicant or an employee may be made for recruitment or retention reasons. A written explanation shall first be submitted in writing to the director.

As a condition of receiving recruitment or retention pay, the recipient must sign an agreement to continue employment with the appointing authority for a period of time following receipt of the payment that is deemed by the appointing authority to be commensurate with the amount of the payment. If the recipient is terminated for cause or voluntarily leaves state employment, the recipient will be required to repay the appointing authority for the proportionate amount of the payment for the time remaining, and it will be recouped from the final paycheck. When the recipient changes employment to another state agency, then a repayment schedule must be approved by the director. Recoupment will be coordinated

with the department of administrative services, state accounting enterprise, to ensure a proper reporting of taxes.

53.9(6) *Pay for increased credentials.* An employee in a noncontract classification who successfully completes a course of study, a certificate program, or any educational program directly related to the employee's current employment is eligible to receive an increase in base pay at the discretion of the appointing authority. Granting an increase pursuant to this subrule will not affect an employee's pay increase eligibility date and may not exceed the maximum pay for the assigned job classification pursuant to subrule 53.6(2).

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—53.10(8A) Phased retirement. Rescinded ARC 1568C, IAB 8/6/14, effective 9/10/14.

11—53.11(8A) Overtime.

53.11(1) *Administration.* Job classes shall be designated by the director as overtime eligible or overtime exempt.

53.11(2) *Eligible job classes.* An employee in a job class designated as overtime eligible shall be paid at a premium rate (one and one-half hours) for every hour in pay status over 40 hours in a workweek.

53.11(3) *Exempt job classes.* An employee in an overtime exempt job class shall not be paid for hours worked or in pay status over 40 hours in a workweek, except as specifically provided for in a collective bargaining agreement.

53.11(4) *Method of payment.* Payment of overtime for employees in noncontract classes shall be in cash or compensatory time. The decision shall rest with the employee, except that the appointing authority may require overtime to be paid in cash. Employees in noncontract classes may elect compensatory time for call back, standby, holiday hours and for working on a holiday. Payment of overtime for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.

53.11(5) *Compensatory time.* An overtime eligible employee in a noncontract class may accrue up to 80 hours of compensatory time before it must be paid off. Compensatory time may be paid off at any time, but it shall be paid off if the employee separates, transfers to a different agency, or moves to a class with a different overtime eligibility designation. The paying off of compensatory time for employees in classes covered by a collective bargaining agreement shall be in accordance with the terms of the applicable agreement.

53.11(6) *Holiday hours.* Holiday hours that have already been paid at a premium rate shall not be counted in calculating overtime, except as specifically provided for in a collective bargaining agreement.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—53.12(8A) Years of service incentive program. Rescinded IAB 8/11/10, effective 9/15/10.

11—53.13(8A) Appeals. Appeal of the application of these rules must be filed as a grievance pursuant to 11—61.1(8A). The appeal procedures for grievance decisions as addressed in 11—61.2(8A) must be exhausted prior to a petition for judicial review.

These rules are intended to implement Iowa Code chapter 8A, subchapter IV.

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- ² See IAB Personnel Department

CHAPTER 54
RECRUITMENT, APPLICATION AND EXAMINATION

[Prior to 11/5/86, Merit Employment Department [570]]

[Prior to 2/18/04, see 581—Ch 5]

11—54.1(8A) Recruitment. Classes are closed to application unless specifically opened for recruitment.

54.1(1) *Open recruitment announcements.* The director shall give public notice of positions opened for recruitment for a minimum of ten calendar days following the announcement date. Recruitment may be limited to a specific geographic area or a specific selective background area or both. Recruitment announcements shall be posted publicly. Copies may also be sent to newspapers, radio stations, educational institutions, professional and vocational associations, and other recruitment sources. Recruitment announcements may be posted as promotional opportunities for current permanent state employees only.

54.1(2) *Content of announcements.* Announcements shall specify the job title, vacancy number, salary range, location, method for making application, closing date for receiving applications, minimum qualifications, and any selective requirements. All announcements must include a statement indicating that the state of Iowa is an affirmative action and equal employment opportunity employer. Announcements for continuous recruitment shall include a statement indicating that applications will be accepted until further notice.

54.1(3) *Advertising.* The appointing authority shall send to the director copies of all advertisements announcing employment opportunities that are to be placed in any publication, and any additional information required by the director. The appointing authority shall comply with any policies established by the director regarding advertising.

11—54.2(8A) Applications.

54.2(1) *Applicant information.* Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job with or without a reasonable accommodation.

54.2(2) *Verifying applicant information.* The director may at any time verify statements contained in an application and seek further information concerning an applicant's qualifications. If information is obtained which affects or would have affected an applicant's qualifications, standing on an eligible list, or status if already employed, the director may make the necessary adjustment or take other appropriate action, including termination if the applicant has already been employed.

54.2(3) *Applicant files.* Applications accepted for processing and necessary related materials will be placed in the applicant files in the department and retained for no less than one year. Applications for jobs which result in the hire of the applicant will be placed in the employee files in the department and retained for no less than the period of employment.

54.2(4) *Application for eligible lists.* Persons may apply to be on eligible lists as follows:

a. Promotional lists. Promotional applicants shall meet the minimum qualifications. Promotional applicants may be subject to keyboard examinations, background checks, psychological examinations, and other examinations used for further screening. The following persons may apply to be on promotional eligible lists:

(1) Permanent employees, including permanent employees of the board of regents and community-based corrections;

(2) Persons enrolled in work experience programs who have successfully completed at least 90 calendar days in the program;

(3) Persons who have been formally enrolled in the department's intern development program for a period of at least 90 calendar days; and

(4) Disabled veterans who are enrolled in a job training program in accordance with the provisions of rule 11—57.9(8A) and have worked a minimum of 160 hours up to a maximum of 780 hours.

b. All-applicant lists. The following persons may apply to be on all-applicant lists:

(1) Persons laid off and eligible for recall;

(2) Judicial branch employees;

(3) Legislative branch employees;

(4) Probationary or provisional probationary employees;

(5) Permanent employees, including permanent employees of the board of regents and community-based corrections;

(6) Temporary employees not on the promotional list and volunteers (including persons enrolled in work experience programs who are not on the promotional list) following 60 calendar days' service with the state;

(7) Nonpermanent employees of the board of regents and community-based corrections; and

(8) Former permanent employees who resigned or retired from state employment in good standing.

54.2(5) *Application pending license or graduation.* An applicant who does not meet the minimum education or license requirements, but who is currently enrolled in an education program that will result in meeting such requirements, may be placed on the eligible list with a "pending graduation" or "pending license" status provided the applicant will meet or has a reasonable expectation of meeting, the requirements within the following nine months. The applicant may be selected for employment, but may not be appointed until all qualification requirements are met.

54.2(6) *Disqualification or removal of applicants.* The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

a. Does not meet the minimum qualifications or selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law.

b. Is incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.

c. Has knowingly misrepresented the facts when submitting information relative to an application, examination, certification, appeal, or any other facet of the selection process.

d. Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, examination, appeal or selection process.

e. Has obtained screening information to which applicants are not entitled.

f. Has failed to submit the application within the designated time limits.

g. Was previously discharged from a position in state government.

h. Has resigned in lieu of discharge for cause.

i. Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

j. Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.

k. Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 11—61.3(8A). Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

54.2(7) *Qualifications.* Applicants must meet the qualifications for the class as well as any selective requirements associated with a particular class or position as indicated in the class description. The director shall determine whether or not an applicant meets such qualifications and requirements.

Applicants and employees may, as a condition of the job, be required to have a current license, certificate, or other evidence of eligibility or qualification. Employees who fail to meet and maintain this requirement shall be subject to discharge in accordance with rule 11—57.10(8A) or 11—subrule 60.2(4).

Any fees associated with obtaining or renewing a license, certificate, or other evidence of eligibility or qualification shall be the responsibility of the applicant or employee unless otherwise provided by statute.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—54.3(8A) Examinations.

54.3(1) *Purpose of examinations.* The director or appointing authority may conduct examinations to assess the qualifications of applicants. Possession of a valid license, certificate, registration, or work permit required by the Iowa Code or the Iowa Administrative Code in order to practice a trade or profession may qualify as evidence of an applicant's basic qualifications.

54.3(2) *Types of examinations.* Examinations may include, but are not limited to, written, oral, physical, or keyboard tests, and may screen for such factors as education, experience, aptitude, psychological traits, knowledge, character, physical fitness, or other standards related to job requirements.

54.3(3) *Background checks.* Background checks and investigations, including, but not limited to, checks of arrest or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule and Iowa Code chapter 8A. Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in the documents' confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

a. Arrest record information, unless otherwise required by law, shall not be considered in the selection of persons for employment unless expressly authorized by the director.

b. The appointing authority shall notify the director of each job class or position that requires applicants to undergo any type of background check. The notification shall document the clear business necessity for the background check and the job relatedness of each topic covered in the inquiry.

c. The appointing authority shall provide a statement that shall be presented to each applicant who is to be investigated under this subrule. This statement shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application and selection process.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—54.4(8A) Development and administration of examinations.

54.4(1) *Examination development.* The director shall oversee the development, purchase, and use of examination materials, forms, procedures, and instructions.

54.4(2) *Examination administration.* The director or appointing authority shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. Examinations may be postponed, canceled, or rescheduled.

a. Examination of persons with disabilities. Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department.

b. Retaking examinations. Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 11—54.6(8A). Violation of the waiting period for an examination shall result in the voiding of the current examination score and the imposition of an additional 60-calendar-day waiting period.

Keyboard examinations, such as typing, may be retaken at any time without a waiting period.

The most recent examination score shall determine the applicant's qualification for the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

54.4(3) Examination materials.

a. All examination materials, including working papers, test booklets, test answer sheets and test answer keys are not public records under Iowa Code chapter 22. All examination materials are the property of the department and shall not be released without the consent of the director.

b. Removing examination material. Any unauthorized person who removes examination material from an examination site, who participates in unauthorized distribution of examination materials, who is in unauthorized possession of examination material or who otherwise compromises the integrity of the examination process shall be subject to discipline, up to and including discharge if employed by the state, as well as prosecution.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—54.5(8A) Scoring examinations. All applicants shall be given uniform treatment in all phases of the examination scoring process applicable to the job class or position and status of the applicant. Applicants may be required to obtain at least a minimum score in any or all parts of the examination process in order to receive a final score or to be allowed to participate in the remaining parts of an examination.

54.5(1) Adjustment of errors. Examination scoring errors will be corrected. A correction shall not, however, invalidate any list already issued or any appointment already made and shall not extend the life of the score.

54.5(2) Points for veterans. Veterans' points shall be applied to veterans as defined in Iowa Code section 35C.1.

a. "Veteran" means a resident of this state who served in the armed forces of the United States at any time during the following dates and who was discharged under honorable conditions:

- (1) World War I from April 6, 1917, through November 11, 1918.
- (2) Occupation of Germany from November 12, 1918, through July 11, 1923.
- (3) American expeditionary forces in Siberia from November 12, 1918, through April 30, 1920.
- (4) Second Haitian suppression of insurrections from 1919 through 1920.
- (5) Second Nicaragua campaign with marines or navy in Nicaragua or on combatant ships from 1926 through 1933.
- (6) Yangtze service with navy and marines in Shanghai or in the Yangtze valley from 1926 through 1927 and 1930 through 1932.
- (7) China service with navy and marines from 1937 through 1939.
- (8) World War II from December 7, 1941, through December 31, 1946.
- (9) Korean conflict from June 25, 1950, through January 31, 1955.
- (10) Vietnam conflict from February 28, 1961, through May 7, 1975.
- (11) Lebanon or Grenada service from August 24, 1982, through July 31, 1984.
- (12) Panama service from December 20, 1989, through January 31, 1990.
- (13) Persian Gulf conflict from August 2, 1990, through the date the President or the Congress of the United States declares a cessation of hostilities. However, if the United States Congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf conflict for purposes of determining

whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf conflict, that date shall be substituted for August 2, 1990.

b. “Veteran” also includes the following:

(1) Former members of the reserve forces of the United States who served at least 20 years in the reserve forces after January 28, 1973, and who were discharged under honorable conditions. However, a member of the reserve forces of the United States who completed a minimum aggregate of 90 days of active federal service, other than training, and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(2) Former members of the Iowa national guard who served at least 20 years in the Iowa national guard after January 28, 1973, and who were discharged under honorable conditions. However, a member of the Iowa national guard who was activated for federal duty, other than training, for a minimum aggregate of 90 days and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(3) Former members of the active, oceangoing merchant marine who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, who were discharged under honorable conditions.

(4) Former members of the women’s air force service pilots and other persons who have been conferred veteran status based on their civilian duties during World War II in accordance with federal Pub. L. No. 95-202, 38 U.S.C. Section 106.

c. Proof of eligibility for points must be provided by the applicant in the form of a certified photocopy of a DD214 Form (Armed Forces Report of Transfer or Discharge) or other official document containing dates of service or a listing of service medals and campaign badges.

d. Applicants who were awarded a Purple Heart, or who have a service-connected disability, or who are receiving disability compensation or pension under laws administered by the U.S. Veterans Administration may request to have a maximum of ten points added to examination scores. Proof of current disability dated within the last 24 months and updated every 24 months after initial application must be submitted for continued eligibility.

11—54.6(8A) Review of written examination questions. Applicants may request to review their incorrectly answered questions on department-administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review. Violation of this waiting period shall result in the voiding of the current examination score and the imposition of an additional 60-calendar-day waiting period.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—54.7(8A) Drug use and drug tests.

54.7(1) Policy. Employees shall not report to work while under the influence of alcohol or illegal drugs. The unauthorized use, possession, sale, purchase, manufacture, distribution, or transfer of any illegal drug or alcoholic beverage while engaged in state business or on state property is prohibited. Employees who violate this policy are subject to disciplinary action up to and including discharge.

54.7(2) Definition and applicability.

a. “Drug test” means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual. These rules authorize only the use of urinalysis tests for this purpose. Other methods of drug testing are prohibited.

b. These rules do not apply to drug tests required under federal statutes, drug tests conducted pursuant to a nuclear regulatory commission policy statement, or drug tests conducted to determine if an employee is ineligible to receive workers’ compensation under Iowa Code section 85.16, subsection 2.

54.7(3) Preemployment drug tests. A urinalysis drug test may be performed as part of a preemployment physical only for department of corrections correctional officer positions. Application

materials for these positions shall include clear notice that a drug test is part of the preemployment physical. Requirements for these tests are as follows:

- a. A urine sample will be collected during the preemployment physical examination.
- b. The sample container will include identification for chain of custody purposes that does not include any part of the applicant's name or social security number.
- c. The container will be transported directly from the site of the physical examination to a laboratory or other testing facility. Samples may be transported via certified mail or courier service.
- d. The sample will be tested and retained by the laboratory or other testing facility for a minimum of 30 days. The applicant may have the sample analyzed, at the applicant's expense, by a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.
- e. Each drug test will include an initial screen and a confirmation of positive results. The initial screening test may utilize immunoassay, thin layer, high performance liquid or gas chromatography, or an equivalent technology. If the initial test utilizes immunoassay, the test kit must meet the requirements of the Food and Drug Administration. All confirmation tests will be done by Gas Chromatography - Mass Spectrometry (GC-MS) at a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.
- f. At a minimum, tests will screen for marijuana, cocaine, and amphetamines.
- g. Procedures for obtaining, sealing, identifying, transporting, storing, and retention of samples shall protect the chain of custody and the viability of the sample, and shall comply with department of public health administrative rules.
- h. The laboratory or other testing facility shall report the results of the drug tests to the appointing authority. The confidentiality of the information shall be protected by all parties.
- i. The appointing authority shall provide an applicant an opportunity to rebut or explain the results of a positive drug test by administering a pretest questionnaire or arranging a posttest conference with the applicant.
- j. A positive confirmation drug test will disqualify an applicant from further consideration and hire for department of corrections correctional officer positions.

54.7(4) Employee drug tests. Drug testing of employees is prohibited except as provided in subrule 54.7(2), paragraph "b."

These rules are intended to implement Iowa Code chapter 8A, subchapter IV.

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¹ Effective date of amendments to 5.11 and 54.12(1/26/83) delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

² See IAB Personnel Department

³ Effective date (7/19/91) of subrule 5.3(3) delayed 70 days by the Administrative Rules Review Committee at its meeting held 7/12/91.

CHAPTER 57 APPOINTMENTS

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 2/18/04, see 581—Ch 8]

11—57.1(8A) Filling vacancies. Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies shall be subject to the provisions of these rules. No vacant position in the executive branch shall be filled until the position has been classified in accordance with Iowa Code chapter 8A and these rules.

A former employee who has participated in any early retirement or early termination program shall not be eligible for any state employment, except as provided for in the applicable program.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—57.2(8A) Probationary appointment. Probationary appointments may be made only to authorized and established positions unless these rules provide otherwise. Appointments to positions covered by merit system provisions shall be made in accordance with 11—Chapter 56 when applicable.

11—57.3(8A) Provisional appointment. If the director is unable to provide at least six applicants for a position, an appointing authority may provisionally appoint a person who meets the minimum qualifications for the class to fill the position pending the person's appointment from an eligible list.

No provisional probationary appointment shall be continued for more than 30 calendar days after the date of original appointment.

Successive provisional appointments shall not be permitted. An employee with provisional status shall not be eligible for promotion, demotion, transfer, or reinstatement to any position nor have reduction in force or appeal rights, but provisional probationary employees shall be eligible for vacation and sick leave and other employee benefits.

An employee shall receive credit for time spent in provisional status that is contiguous to the period of probationary status.

11—57.4(8A) Temporary appointment. Persons may be appointed with temporary status to any class. They may be paid at any rate of pay within the range for the class to which appointed.

Temporary appointments may be made to temporary positions or to permanent positions, or on an overlap basis to unauthorized positions, and may be made to any class and at any rate of pay within the range for the class to which appointed.

A temporary appointment shall not exceed 780 work hours in a fiscal year.

A temporary employee shall have no rights to appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits, unless the temporary employee becomes covered by a collective bargaining agreement, in which case the temporary employee may have rights under the collective bargaining agreement.

A person appointed with temporary status shall only be given another temporary type of appointment to the extent that the total number of hours worked in all temporary and seasonal appointments in any agency in a fiscal year does not exceed 780 hours.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—57.5(8A) Reinstatement. A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require appointment from a list of eligibles. Former employees who retired and applied for retirement benefits under an eligible state retirement system or program are not eligible for reinstatement unless otherwise permitted by law.

A permanent employee who demotes may at any time be reinstated to a position in the class occupied prior to the demotion at the discretion of the appointing authority. Reinstatement shall not require appointment from a list of eligibles.

Former employees who are reinstated shall accrue vacation at the same rate as at the time they separated from state employment, and the employee's previous vacation anniversary date minus the period of separation shall be restored. This paragraph shall be effective retroactive to January 1, 1995.
[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—57.6(8A) Internship appointment. The director may authorize an appointing authority to make an internship appointment to an established position, or if funds are available, to an unauthorized position.

57.6(1) Internship appointments shall expire upon attainment of a degree.

57.6(2) Employees with internship status shall have no rights of appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits of state employment, nor shall credit be given for future vacation accrual purposes.

57.6(3) Successful completion of an internship appointment of at least 90 calendar days shall authorize the appointee to be on promotional or all-applicant lists. Only persons formally enrolled in the department's intern development program are eligible to be on promotional lists. Successful completion shall be as determined by the director at the time of enrollment.

11—57.7(8A) Seasonal appointment. The director may authorize appointing authorities to make seasonal appointments to positions. Seasonal appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Seasonal appointments may, however, be made only during the seasonal period approved by the director for the agency requesting to make the appointment and must be concluded by the end of that period. To be eligible to make seasonal appointments, the appointing authority must first submit a proposed seasonal period to the director for approval. Such period shall not exceed six months in a fiscal year; however, the appointment may start as early as the beginning of the pay period that includes the first day of the seasonal period and may end as late as the last day of the pay period that includes the last day of the seasonal period.

Persons appointed with seasonal status shall have no rights to appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits, unless the temporary employee becomes covered by a collective bargaining agreement, in which case the temporary employee may have rights under the collective bargaining agreement.

A person appointed with seasonal status shall only be given another temporary or seasonal appointment to the extent that the total number of hours worked in all temporary and seasonal appointments in any agency in a fiscal year does not exceed 780 hours.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—57.8(8A) Overlap appointment. When it is considered necessary to fill a position on an overlap basis pending the separation of an employee, the appointment of a new employee may be made in accordance with these rules for a period not to exceed 60 calendar days. An overlap appointment must be in the same class as the authorized position being overlapped, unless otherwise approved by the director. Any overlap appointment for a longer period must first be approved by the director.

11—57.9(8A) Noncompetitive appointments for disabled veterans. A disabled veteran who satisfactorily completes a federally funded job training program approved by the United States Department of Veterans Affairs in a state agency may be appointed noncompetitively into a vacant position in the job classification in which the veteran has been trained. A person who satisfactorily completes the program is eligible for a noncompetitive appointment with that agency for a period of one year. The appointment will be made in accordance with 11—subparagraph 54.2(4) "a"(4).

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—57.10(8A) Rescinding appointments. If, after being appointed, it is found that an employee should have been disqualified or removed as provided for in these rules, the appointing authority may rescind the appointment. An employee with permanent status may file a grievance in accordance with 11—Chapter 61.

[ARC 8063B, IAB 8/26/09, effective 9/30/09; ARC 1568C, IAB 8/6/14, effective 9/10/14]

These rules are intended to implement Iowa Code chapter 8A, subchapter IV.

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NOTE: Rule 8.12 inadvertently omitted 8/12/87 and added 9/9/87.

CHAPTER 60
SEPARATIONS, DISCIPLINARY ACTIONS AND REDUCTION IN FORCE

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 1986, see Executive Council[420] Ch 10]

[Prior to 1/21/04, see 581—Ch 11]

11—60.1(8A) Separations.

60.1(1) *Resignation, retirement, phased retirement, early retirement, or early termination.*

a. To resign or retire in good standing, an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 11—Chapter 61 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee of the authority's decision to remove the employee from the payroll. Notification shall be sent to the employee's last-known address, with delivery confirmation required. The appointing authority shall consider requests to review circumstances.

b. Rescinded IAB 8/6/14, effective 9/10/14.

c. Employees who received early retirement or early termination incentives provided by 1986 Iowa Acts, Senate File 2242, shall not be eligible for further state employment.

d. Separation from employment for purposes of induction into military service shall be in accordance with 11—subrules 63.6(2) and 63.9(2).

e. A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

60.1(2) *Expiration of appointment.* When an employee is separated upon the expiration of an appointment of limited duration, the appointing authority shall immediately report the separation to the department on forms prescribed by the director.

60.1(3) *Early retirement incentive program—1992.* This early retirement incentive program is provided for in 1992 Iowa Acts, chapter 1220. Employees who participated in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

60.1(4) *Sick leave and vacation incentive program—2002.* This termination incentive program is provided for in 2001 Iowa Acts, Second Extraordinary Session, chapter 5. An employee who elected participation in this program is not eligible to accept any further permanent employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

60.1(5) *Sick leave and vacation incentive program—Fiscal Year 2003.* This termination incentive program is provided for in 2002 Iowa Acts, Second Extraordinary Session, chapter 1001. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

60.1(6) *Sick leave and vacation incentive program—Fiscal Year 2005.* This termination incentive program is provided for in 2004 Iowa Acts, chapter 1035. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

60.1(7) *State employee retirement incentive program—Fiscal Year 2010.*

a. This state employee retirement incentive program is provided for in 2010 Iowa Acts, Senate File 2062.

b. To become a program participant, an employee must complete and file a program application form on or before April 15, 2010, and must terminate employment no later than June 24, 2010.

c. For purposes of this program, the following definitions shall apply:

"Employee" means an employee of the executive branch of this state, including an employee of a judicial district of the department of correctional services, an employee of the fair board, an employee of the state board of regents if the board elects to participate in the program, and an employee of the department of justice. However, "employee" does not mean an elected official.

"Eligible employee" means an employee who is employed on February 10, 2010, who is 55 years of age or older on July 31, 2010, and who has submitted an application by the employee's last day of employment to the Iowa public employees' retirement system to begin monthly retirement benefits by July 2010. "Eligible employee" shall include an employee who began receiving IPERS monthly benefits prior to February 2010 if the employee is employed on February 10, 2010, and terminates employment on or before June 24, 2010. "Eligible employee" shall not include an employee who is eligible for the sick leave conversion program as described in Iowa Code section 70A.23, subsection 4, or a former employee who withdraws the application for monthly retirement benefits from the Iowa public employees' retirement system before receiving the first month of benefits.

"Participant" means an eligible employee who, on or before April 15, 2010, submits an application to participate and does participate in the state employee retirement incentive program established by this subrule. For the purposes of this program, a person remains a participant after all benefits under this program have been made.

"Program" means the state employee retirement incentive program established in 2010 Iowa Acts, Senate File 2062.

"State" means the state of Iowa and all of its branches, departments, agencies, boards, or commissions, including a judicial district department of correctional services and the state board of regents.

d. A participant who elects to remain in the state's retiree health insurance group plan may receive a health insurance contribution benefit. The health insurance contribution benefit consists of up to 5 years of contributions toward retiree health insurance. The contributions shall be used to pay the employer's portion of the health insurance premiums. The department shall determine the contribution rate based on the employer's contribution to an existing state plan.

A participant shall begin receiving the health insurance contribution benefit once payments, if any, under Iowa Code section 70A.23 cease, and shall continue to receive such benefits for 5 years after termination of employment. If a participant is not eligible for payments under Iowa Code section 70A.23, the participant will begin receiving health insurance contribution benefits the month following termination of employment and shall continue to receive such benefits for 5 years after termination of employment.

e. All existing rules and policies regarding continuation of health insurance and changing health insurance plans shall apply to participants and surviving spouses covered by the program.

f. A participant will receive a years of service incentive payment for 5 years after termination of employment. The payments shall include the entire value of the participant's accrued but unused vacation leave and, for participants with at least 10 years of state employment, \$1000 for each year of state employment, up to 25 years of employment. State employment shall include all past and present employment with the state, regardless of whether the employee took a refund of the contributions made to IPERS for a prior period of service, if the employee provides adequate documentation of prior periods of employment. The payment shall be paid in five equal installments beginning in September 2010 and ending in 2014.

g. If a participant dies within 5 years of termination of employment, the participant's beneficiary will receive any remaining years of service incentive benefits. If the participant's surviving spouse is covered on the participant's state retiree health insurance plan, the surviving spouse may elect to continue health insurance coverage and will receive any remaining health insurance contribution benefits under this program. If the surviving spouse was not covered by the participant's health insurance plan, or if there is no surviving spouse, any remaining health insurance contribution benefits are forfeited.

h. A participating employee, as a condition of participation in this program, shall waive any and all rights to receive payment for accrued vacation pursuant to Iowa Code section 91A.4 and shall waive all rights to file suit against the state of Iowa, including all of its departments, agencies, and other subdivisions, based on state or federal claims arising out of the employment relationship.

i. The administrative head, manager, supervisor, or any employee of a department, agency, board, or commission of the state of Iowa shall not coerce or otherwise influence any state employee to participate or not participate in this program.

j. A participant is not eligible to accept any further employment with the state, other than as an elected official or a member of a board or commission, from the date of termination from employment. A participant may not enter into a contract to provide services to the state as an independent contractor or a consultant.

k. The state's obligations and duties under Iowa Code chapter 669 are not altered or diminished by a participant's signing of the program application and release form. Participants may pursue any remedy allowed in Iowa Code chapter 669 without regard to program eligibility.

[ARC 8692B, IAB 4/21/10, effective 3/29/10; ARC 8727B, IAB 5/5/10, effective 4/16/10; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

60.2(1) Suspension.

a. Suspension pending investigation. An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. If, upon investigation, it is determined that a suspension without pay was warranted as provided in 60.2(1) "b" (1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

b. Disciplinary suspension. An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

(1) Employees who are covered by the premium overtime provisions of the federal Fair Labor Standards Act may be suspended without pay.

(2) Employees who are exempt from the premium overtime provisions of the federal Fair Labor Standards Act will not be subject to suspension without pay except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director. Otherwise, when a suspension is imposed on such an employee, it shall be with pay and shall carry the same weight as a suspension without pay for purposes of progressive discipline. The employee will perform work during a period of suspension with pay unless the appointing authority determines that safety, morale, or other considerations warrant that the employee not report to work.

60.2(2) Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration

shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

60.2(3) Disciplinary demotion. A disciplinary demotion may be used to permanently move an employee to a lower job classification. A temporary disciplinary demotion shall not be used as a substitute for a suspension without pay or reduction in pay within the same pay grade. An employee receiving a disciplinary demotion shall only perform the duties and responsibilities consistent with the class to which demoted. An appointing authority may disciplinary demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reclassified to a lower class. A written statement of the reasons for the disciplinary demotion shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 11—58.2(8A).

An agency may not disciplinarily demote an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

60.2(4) Discharge. An appointing authority may discharge an employee. Prior to the employee's being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

60.2(5) Termination for failure to meet job requirements. When an employee occupies a position where a current qualification for appointment is based upon the required possession of a temporary work permit or on the basis of possession of a license or certificate, and that document expires, is revoked or is otherwise determined to be invalid, the employee shall either be removed from the payroll for failure to meet or maintain license or certificate requirements, or otherwise appointed to another position in accordance with these rules. This action shall be effective no later than the pay period following the failure to obtain, revocation of, or expiration of the permit, license, or certificate.

When an employee occupies a position where a current qualification for appointment is based upon the requirement of an approved background or records investigation and that approval is later withdrawn or unobtainable, the employee shall be immediately removed from the payroll for failure to maintain those background or records requirements or may be appointed to another position in accordance with these rules.

60.2(6) Appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge shall be in accordance with 11—Chapter 61. The written statement to the employee of the reasons for the discipline shall include the verbatim content of 11—subrule 61.2(6).

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—60.3(8A) Reduction in force. A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered

employees in a class or the number of hours worked, as determined by the “full-time equivalent” funding attributed to the position, by a permanent merit system covered employee in a class, except as provided in subrule 60.3(1).

60.3(1) The following agency actions shall not constitute a reduction in force nor require the application of these reduction in force rules:

- a.* An interruption of employment for no more than 20 consecutive calendar days, with the prior approval of the director.
- b.* Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the director.
- c.* The promotion or reclassification of an employee to a class in the same or a higher pay grade.
- d.* The reclassification of an employee’s position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized.
- e.* A change in the classification of an employee’s position or the appointment of an employee to a vacant position in a class in a lower pay grade resulting from a disciplinary or voluntary demotion.
- f.* The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.
- g.* A reduction in the number of, or hours worked by, permanent employees not covered by merit system provisions.

60.3(2) The agency’s reduction in force shall conform to the following provisions:

- a.* Reduction in force shall be by class.
- b.* The reduction in force unit may be by agency organizational unit or agencywide. If the agency organizational unit is smaller than a bureau, it must first be reviewed by the director.
- c.* The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if the unit(s) is smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director.
- d.* The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee’s rights under these rules. A copy of the employee’s retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency’s reduction in force plan has been approved by the director, unless otherwise authorized by the director.
- e.* The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

60.3(3) Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record. The director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject

to approval of the director. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. Length of service and performance credits shall be calculated as follows:

a. Credit for length of service shall be given at the rate of one point for each month of employment, including employment credited to the employee during a probationary period. Any period of 15 calendar days of service in a month will be considered a full month. In computing length of service credit, the appointing authority shall include all continuous merit system covered nontemporary service in the executive branch. If a merit system covered nontemporary employee's employment is interrupted due to (1) a reduction in force, (2) qualification for long-term disability, or (3) a work-related injury, and the employee is subsequently reinstated to the same class in a different layoff unit or to a different class than that held at the time of separation in accordance with rule 11—57.5(8A), and the reinstatement occurs within two years of the interruption of employment, prior service credit shall be restored. Such credit will be subject to a reduction for the period of separation from state service.

Length of service credit shall not include the following periods:

- (1) Any period of temporary or seasonal employment, if not credited toward the probationary period.
- (2) Any period of suspension without pay of 15 days or more.
- (3) Approved leaves of absence without pay in excess of 15 days.
- (4) Any period of layoff of 15 days or more.
- (5) Any period of long-term disability of 15 days or more.
- (6) Any period of unpaid absence that was not subsequently used to establish or adjust the employee's date of hire.

b. Credit for the performance record shall be calculated using the results of documented performance evaluations completed in accordance with 11—subrule 62.2(2) as follows:

- (1) A performance evaluation period rated overall as “less than competent” or “does not meet expectations” or for which the “overall sum of ratings” is less than 3.00 shall receive no credit.
- (2) A performance evaluation period rated overall as “competent” or better, or “meets or exceeds expectations” or for which the “overall sum of ratings” is 3.00 or greater shall receive one retention point for each month of such rated service.

All employees shall be evaluated for performance in accordance with 11—subrule 62.2(2). If the period covered on the evaluation exceeds 12 months, the rating shall apply only to the most recent 12 months of the period. If the period covered by the evaluation exceeds 12 months and the employee's overall rating mandates the receipt of no credit pursuant to 60.3(3)“b”(1), then that overall rating shall apply only to the first 12 months of the period and the remaining months shall be rated as competent. Time spent on approved military leave, workers' compensation leave, or educational leave with or without pay that is required by the appointing authority shall be counted as competent performance.

c. The total retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance record points.

60.3(4) Order of reduction in force. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the layoff unit. Reduction in force selections shall be made from the list in inverse order regardless of full-time or part-time status, except as provided in subrule 60.3(3). If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

- a. The employee with the highest total performance record points; and then, if still tied,
- b. The employee with the lower last four digits of the social security number.

60.3(5) Bumping (class change in lieu of layoff). Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights.

a. Supervisory employees, with the exception of supervisory employees of the department of public safety, may not bump or replace junior employees who are not being laid off. For purposes of this subrule, “junior” employee means an employee with less seniority or fewer retention points than a supervisory employee.

b. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement.

The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of administrative services as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director.

c. When bumping as set forth in paragraph 60.3(5) “b,” the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points except as provided for in this subrule. If bumping occurs, the employee with the fewest total retention points in the class shall then be subject to reduction in force.

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

60.3(6) Recall. Eligibility for recall shall be for one year following the date of the reduction in force.

a. The following employees or former employees are eligible to be recalled:

- (1) Former employees who have been laid off.
- (2) Employees who have bumped in lieu of layoff.
- (3) Employees whose hours have been reduced, constituting a reduction in force.

b. Current employees who exercised bumping rights in accordance with subrule 60.3(5) and former employees terminated due to layoff in accordance with subrule 60.3(6) shall only be on the recall list for the class and layoff unit occupied at the time of the reduction in force.

c. The following provisions shall apply to the issuance and use of recall lists:

(1) Recall lists shall be issued for merit system covered positions and contract-covered positions only.

(2) When one or more names are on the recall list for a class in which a vacancy exists, the agency must fill that vacancy with a former employee from that list. If no one from a recall list is selected, the agency shall justify that decision to the director before the position may be filled by other methods.

(3) The recall alternatives in (2) above must be exhausted before other eligible lists may be used to fill vacancies.

d. Recall shall be by class without regard to an employee’s status at the time of layoff (full-time or part-time).

An employee may remain on the recall list for the same status as that held at the time of layoff after having declined recall to a position with a different status. However, the employee will be removed for the status declined.

e. One failure to accept appointment to a nontemporary position with the same status as that held prior to the reduction in force shall negate all further recall rights.

f. An appointing authority may refuse to recall employees who do not possess the documented special skills or abilities required for a position, with the prior approval of the director.

g. Notice of recall shall be sent with delivery confirmation. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

h. Vacation accrual and accrued sick leave of recalled employees shall be in accordance with 11—subrule 63.2(2), paragraph “l,” and 11—subrule 63.3(10), respectively.

i. An employee who bumps in lieu of layoff or has a work hours reduction, and subsequently leaves employment for any reason, shall be removed from the recall list.

j. Employees who are recalled shall be removed from the recall list unless otherwise provided for in these rules.

k. Pay upon recall shall be in accordance with rule 11—53.6(8A).

60.3(7) Reduction in force shall not be used to avoid or circumvent the provisions or intent of 2003 Iowa Code Supplement section 8A.413, or these rules governing reclassification, disciplinary demotion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 11—Chapter 61.

[**ARC 8764B**, IAB 5/19/10, effective 4/30/10; **ARC 0401C**, IAB 10/17/12, effective 11/21/12; **ARC 1568C**, IAB 8/6/14, effective 9/10/14]

These rules are intended to implement Iowa Code section 8A.413.

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¹ Effective date of amendment to 11.1(1) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

² IAB Personnel Department

³ Effective date of amendments to 7.3(1), 7.12(19A), 11.3(1) “a,” 11.3(2) “d” and “e,” 11.3(4), 11.3(5), 11.3(6) “c” and 11.3(6) “l” delayed 70 days by the Administrative Rules Review Committee at its meeting held May 13, 1992; delay lifted by the Committee at its meeting held June 10, 1992. See emergency adopted amendment to 11.3(6) “c” and “d,” 5/27/92 Iowa Administrative Bulletin, pages 2203 and 2204.

CHAPTER 63

LEAVE

[Prior to 11/5/86, Merit Employment Department[570]]

[Prior to 1/7/04, see 581—Ch 14]

11—63.1(8A) Attendance. Appointing authorities shall establish the working schedules, regulations, and required hours of work for employees under their direction. All regulations and schedules shall be made known to the affected employees by appointing authorities. All absences of probationary and permanent employees shall be charged to one of the leave categories provided for in this chapter.

11—63.2(8A) Vacation leave.

63.2(1) Nontemporary employees shall earn vacation for continuous state employment as follows:

- a. Two unscheduled holidays to be added to the vacation accrual each year.
- b. Two weeks of vacation during the first and through the fourth year of employment.
- c. Three weeks of vacation during the fifth and through the eleventh year of employment.
- d. Four weeks of vacation during the twelfth year and through the nineteenth year of employment.
- e. Four and four-tenths weeks of vacation during the twentieth year and through the twenty-fourth year of employment.
- f. Five weeks of vacation during the twenty-fifth and all subsequent years of employment.

63.2(2) Vacation is subject to the following conditions:

a. Vacation shall be subject to the approval of the appointing authority. The appointing authority shall approve vacation so as to maintain the efficient operation of the agency; take into consideration the vacation preferences and needs of the employee; and make every reasonable effort to provide vacation to prevent any loss of vacation accrual.

b. Probationary and permanent part-time employees shall accrue vacation in an amount proportionate to that which would be accrued under full-time employment.

c. Vacation shall not accrue during any absence without pay.

d. An employee who is transferred, promoted, or demoted from one state agency to another shall be credited with the vacation accrued.

e. Employees, including employees who are paid from a pay plan having annual salary rates, who leave state employment for any reason shall be paid, or have payment made according to law, for all accrued vacation. Payment shall be included with the employee's final paycheck and shall be based on the employee's total biweekly regular rate of pay at the time of separation. When other pay is to be included in the calculation, that other pay must have been in effect for at least three pay periods. Vacation shall not be granted after the employee's last day of work.

f. An employee may, at the appointing authority's discretion, be required to use all accrued vacation before being granted any leave without pay, except as otherwise provided in these rules.

g. Vacation shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's vacation shall not be counted against the employee's accrued vacation.

h. In the event of an illness or disability while on vacation, that portion of the vacation spent under the care of a physician shall be switched retroactively to and charged against the employee's accrued sick leave upon satisfactory proof from the physician of the illness or disability and its duration.

i. Vacation shall not be used in excess of the amount accrued, and shall not be used until the pay period after it is accrued.

j. Vacation shall be cumulative to a maximum of twice the employee's annual rate of accrual, including sick leave conversion. An appointing authority may require an employee to take vacation whenever it would be in the best interests of the agency. The employee shall be given reasonable notice of the appointing authority's decision to require the use of accrued vacation. However, an employee shall not be required to reduce accrued vacation to less than 80 hours.

k. One week of vacation shall be equal to the number of hours in the employee's normal, regular workweek.

l. Any employee who is laid off, or an employee who separated due to qualification for long-term disability benefits or an on-the-job injury or illness and subsequently returns to state employment within

two years following the date of separation, shall have previous continuous service and the period of separation counted toward the vacation accrual rate.

m. Reserved.

n. Time spent in military service, within the specified time limits of the military training and service Act, shall be considered continuous service for the purpose of computing vacation accrual, provided the employee returns to state service within 90 calendar days following discharge from military duty. Vacation shall not accrue to an employee while on military leave without pay.

o. If on June 1 an employee has a balance of 160 or more hours of accrued leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid on a separate warrant on the payday which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules. This paragraph applies only to employees not covered by a collective bargaining agreement.

11—63.3(8A) Sick leave with pay. Probationary and permanent full-time employees, except peace officer employees of the department of natural resources and the department of public safety, shall accrue sick leave as set forth in this paragraph. If the employee's accrued sick leave balance is 750 hours or less, the employee shall accrue one and one-half days of sick leave per month, which is 5.538462 hours per pay period. If the employee's accrued sick leave balance is 1500 hours or less but more than 750 hours, the employee shall accrue one day of sick leave per month, which is 3.692308 hours per pay period. If the employee's accrued sick leave balance is more than 1500 hours, the employee shall accrue one-half day of sick leave per month, which is 1.846154 hours per pay period. Peace officer employees of the department of natural resources and department of public safety shall accrue sick leave at the same rate as the rate provided under the State Police Officers Council collective bargaining agreement. The use of sick leave with pay shall be subject to the following conditions:

63.3(1) Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

63.3(2) Sick leave shall not be used as vacation.

63.3(3) Sick leave shall not be granted in excess of the amount accrued.

63.3(4) There is no limit on the accumulation of sick leave. An employee who has accrued at least 240 hours of sick leave may elect to accrue additional vacation in lieu of the normal sick leave accrual. An employee who has made an election to convert sick leave to vacation will be credited with four hours of vacation for each full month when sick leave is not used during that month. A conversion shall not be made if the accrued sick leave is less than 240 hours in the pay period in which the conversion would be made. The conversion of sick leave shall be prorated for employees who are normally scheduled to work less than full-time (40 hours per week). An employee's maximum vacation accrual may be increased under this subrule up to 96 hours.

63.3(5) In all cases when an employee has been absent on sick leave, the employee shall immediately upon return to work submit a statement that the absence was due to illness or other reasons stated in this rule. Where absence exceeds three working days, the reasons for the absence shall be verified by a physician or other authorized practitioner if required by the appointing authority. An appointing authority may require verification for lesser periods of absence and at any time during an absence. In all cases, sick leave shall not be deducted from that accrued until authorized by the appointing authority.

63.3(6) Sick leave shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's sick leave shall not be counted against the employee's accrued sick leave.

63.3(7) Sick leave shall not accrue during any absence without pay.

63.3(8) Probationary and permanent part-time employees shall accrue sick leave in an amount proportionate to that which would be accrued under full-time employment.

63.3(9) An employee who is transferred, promoted, or demoted from one agency to another shall be credited with the sick leave accrued.

63.3(10) All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23, or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee is separated due to an on-the-job injury or illness and is reemployed by any state agency within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa Code section 70A.23 and the provisions of 11—64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

63.3(11) Employees may also use accrued sick leave, not to exceed a total of 40 hours per fiscal year, for the following purposes:

- a. When a death occurs in the immediate family;
- b. For the temporary care of, or necessary attention to, members of the immediate family.

For purposes of this subrule, "immediate family" means the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse and other persons who are members of the employee's household.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

63.3(12) If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave. Employees shall, upon request, be paid accrued compensatory leave in a lump sum. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4).

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—63.4(8A) Family and Medical Leave Act leave. An employee who has been employed for a cumulative total of 12 months or more in the most recent seven-year period and who has worked at least 1,250 hours during the 12-month period immediately preceding the date leave is to begin shall be eligible for family and medical leave in accordance with the federal Family and Medical Leave Act (FMLA) and 29 CFR Part 825, these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. The FMLA leave year begins on the first day of each fiscal year. Eligible employees are entitled to FMLA leave subject to the following conditions:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous 12 months. Leave may be for one or more of the following reasons:

- a. The birth or placement with the employee of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) for adoption or foster care provided the leave is taken within 12 months following any such birth, adoption or foster placement;
- b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

d. A serious health condition that makes an employee unable to work at all or perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12101 et seq., and the regulations at 29 CFR Section 1630.2(n).

e. A qualifying exigency, as defined in federal FMLA regulations, arising out of the fact that the employee's spouse, son, daughter or parent is a covered servicemember on covered active duty, or has been notified of an impending call or order to covered active duty, in a foreign country.

f. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the FMLA regulations.

63.4(2) Leave may be taken on an intermittent basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph "a" of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph "b," "c," "d," "e," or "f" of subrule 63.4(1) is mandatory if certified by a health care provider or proper military authority.

63.4(3) Use of sick leave shall be in accordance with rule 11—63.3(8A). When FMLA leave is taken pursuant to paragraph "a," "b," "c," "e," or "f" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

When FMLA leave is taken pursuant to paragraph "d" of subrule 63.4(1), an employee must exhaust all paid sick leave, compensatory leave, and vacation before unpaid leave is granted.

63.4(4) An employee shall submit a written request, using forms prescribed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice as soon as practicable after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline of the employee.

The appointing authority shall provide the employee with all notices required by the federal Family and Medical Leave Act and the policies of the department. Notices shall be provided to employees within the time frames prescribed by the federal regulations and the policies of the department. The appointing authority shall notify the employee using forms prescribed by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within five workdays.

63.4(5) The appointing authority may, at the agency's expense, require a second opinion. The appointing authority will designate the health care provider to furnish the second opinion. In making the designation, the appointing authority shall select a provider that is not employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

63.4(6) During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have

dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to the same level of benefits as prior to the commencement of leave upon completion of the necessary insurance applications and other forms required by the department.

63.4(7) Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than the employee would have received had the leave not been taken. If an employee does not return from leave because of the continuation, reoccurrence or onset of a serious health condition, the appointing authority shall require written certification from the health care provider. If the reason for the employee's failure to return is not a certified serious health condition or other circumstances beyond the control of the employee, the state may recover its share of health and dental benefit insurance premiums paid during the period of leave.

63.4(8) The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that:

a. If a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.

b. The employee's pay increase eligibility date shall be adjusted for absences of more than 30 calendar days.

63.4(9) If an employee unequivocally advises the employer that the employee does not intend to return to work, the employee's entitlement to FMLA leave and associated benefits cease. The failure to return to work upon the expiration of FMLA leave may be considered to be job abandonment.

63.4(10) If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans with Disabilities Act.

63.4(11) An employee remains a participant in the deferred compensation and dependent care programs while on FMLA leave as authorized by these rules and the policies of the department.

63.4(12) FMLA leave runs concurrently with other leave programs administered by the department to the extent the leave qualifies as FMLA leave.

63.4(13) FMLA leave runs concurrently with a workers' compensation absence when the workers' compensation absence is one that meets the FMLA criteria.

An employee can be offered "restricted light duty," and if such restricted duty is refused, it may result in the loss of workers' compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers' compensation benefits but is still protected by the FMLA.

Employees on workers' compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers' compensation laws and will have no job restoration rights under the FMLA.

63.4(14) Retention of vacation leave. Notwithstanding subrule 63.4(3), non-contract-covered employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, using forms prescribed by the department, to retain vacation by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

For employees covered by a collective bargaining agreement, the retention of vacation leave will be governed by the collective bargaining agreement.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 8979B, IAB 8/11/10, effective 9/15/10; ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—63.5(8A) Leave without pay. A permanent or probationary employee, on written request and written approval by the appointing authority, may be granted leave without pay for any reason deemed satisfactory to the appointing authority, subject to the following conditions:

63.5(1) Leave without pay shall not originally be granted for more than 12 consecutive months. Accrued leave need not be exhausted before leave without pay is granted except that accrued sick leave must be exhausted if the reason for leave without pay is due to a medically related disability. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority except as provided in subrule 63.5(4). On written request, prior to the expiration of a granted leave, the appointing authority may, in writing, grant an extension of the leave without pay. The approved leave without pay extension may not be for more than an additional 12 consecutive months, unless otherwise approved by the director.

63.5(2) Failure by the employee to report back to work on the date specified in the written request shall be considered a voluntary resignation unless otherwise approved by the appointing authority. A written statement accepting the resignation shall be sent to the employee by the appointing authority and a copy sent to the director.

63.5(3) Employees who do not supplement workers' compensation with sick leave, vacation or compensatory leave, and who are kept on the payroll in a nonpay status for more than 30 calendar days, shall be placed on leave without pay for purposes of probationary periods, pay increase eligibility, and other benefits. A written statement to this effect shall be sent to the employee within three days following the action by the appointing authority.

63.5(4) When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave for at least an eight-week period when the purpose is to provide recovery from a medically related disability. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules. The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave, the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

- a. The employee fails or refuses to supply the requested verification of continued disability.
- b. The verification does not clearly show sufficient continuing reason that would prevent the performance of the employee's regular work duties.
- c. The employee is shown to be performing work which is incompatible with the purpose for which the leave without pay was granted.

63.5(5) If an employee applies for leave under the Family and Medical Leave Act, any leave without pay under the Family and Medical Leave Act shall run concurrently with the leave granted under this rule.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

11—63.6(8A) Rights upon return from leave.

63.6(1) An employee who is on approved leave without pay, disaster service volunteer leave or educational leave must notify the appointing authority from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. An employee on leave without pay, disaster service volunteer leave, or educational leave may request permission from the appointing authority to return to work sooner than the original

approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

63.6(2) An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

63.6(3) At the conclusion of a period of military service, an employee who is on approved military service leave must notify the appointing authority of the intent to return to employment. Upon return from military leave, the employee shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—63.7(8A) Compensatory leave. Compensatory leave accrued in accordance with 11—subrule 53.11(5) shall be granted at the request of the employee whenever possible. However, the appointing authority need not grant a request for compensatory leave if granting the leave would cause an undue disruption.

11—63.8(8A) Holiday leave. Holidays shall be granted in accordance with statutory provisions to employees who are eligible to accrue vacation and sick leave.

63.8(1) The value of a holiday for full-time employees shall be eight hours or the number of hours the employee is scheduled to work on that day, whichever is greater. The value of a holiday that falls on a full-time employee's scheduled day off shall be eight hours. Employees who are normally scheduled to work full-time shall not have their holiday compensation prorated for time on leave without pay during the pay period if the employee meets the conditions of subrule 63.8(3).

Compensation for holidays shall be prorated for employees who are normally scheduled to work less than 80 hours in a pay period. Compensation shall be based on the number of hours in pay status during the pay period in which the holiday falls plus the hours that would normally be scheduled for the holiday which shall be included when determining the number of pro-rata holiday hours.

Leave accrued under Iowa Code section 1C.2 as vacation shall be based on the employee's hours in pay status.

Compensation for holidays under this rule shall be either in pay or compensatory leave. The decision to pay or grant compensatory leave shall be made by the appointing authority.

63.8(2) For employees who work Monday through Friday, a holiday falling on Sunday shall be observed on the following Monday and a holiday falling on Saturday shall be observed on the preceding Friday. For all other employees, the designated holiday shall be observed on the day it occurs.

63.8(3) To be eligible for holiday compensation an employee must be in pay status the last scheduled workday before and the first scheduled workday after the holiday.

An employee who separates from employment and whose last day in pay status precedes a holiday shall not be eligible for payment for that holiday.

63.8(4) When the holiday falls on an overtime-covered employee's scheduled workday, and the employee does not get the day off, the employee shall be compensated for the holiday in accordance with subrule 63.8(1) in addition to a premium rate for time worked. The premium rate shall be paid for hours worked during the 24-hour period from 12 a.m. through 11:59 p.m. on the holiday. However, hours compensated at the premium rate shall not be counted as part of the 40 hours when calculating overtime pay.

When the holiday falls on an overtime-covered employee's day off, the employee shall be compensated for the holiday to a maximum of eight hours.

63.8(5) When an overtime exempt employee is required to work on a holiday, the employee may be compensated for the time worked in addition to regular holiday pay at the discretion of the appointing authority. When granted, compensation shall be at the employee's regular rate of pay for all hours worked.

11—63.9(8A) Military leave.

63.9(1) A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in each calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee's work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

63.9(2) A nontemporary employee who is ordered by proper authority to military duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll.

63.9(3) Nontemporary employees who elect to separate from employment when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ordered by proper authority to military duty shall continue to receive regular pay and benefits for 30 days. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

63.9(4) At the conclusion of military service, the employee must notify the employee's appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344.

63.9(5) An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa's benefits program policies and procedures. Upon return to employment, the employee's accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

63.9(6) An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

63.9(7) A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—63.10(8A) Educational leave. Educational leave, with or without pay, may be granted at the discretion of the appointing authority for the purpose of assisting state employees to develop skills that will improve their ability to perform their present job responsibilities or to provide training and developmental opportunities for employees that will enable the agency to better meet staffing needs. Education financial assistance shall be in accordance with rule 11—64.10(8A).

63.10(1) Length of leave. Educational leave shall be requested for a period not to exceed 12 consecutive months. Accrued vacation or compensatory leave need not be exhausted before educational leave is granted. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority. The appointing authority may grant an extension of the original leave for an additional 12 months.

63.10(2) *Selection of applicants.* While the selection of applicants is at the discretion of the appointing authority, it is the express policy of the state to offer all qualified employees an equal opportunity to be considered for educational leave within the limitations imposed by agency staffing requirements.

63.10(3) *Educational institutions.* An employee on educational leave may take course work at any accredited educational institution within the state. Attendance at out-of-state institutions may be approved provided there are geographical or educational considerations which make attendance at institutions within the state impractical.

63.10(4) *Agency report.* The appointing authority shall report to the director and the legislative council, not later than October 1 of each year, the direct and indirect costs to the agency of educational leave granted to employees during the preceding fiscal year in a manner prescribed by the director.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—63.11(8A) Election leave. An employee who is not covered by the federal Hatch Act and who becomes a candidate for paid, partisan elective office shall, upon the employee's request, be granted leave 30 calendar days before a contested primary, special, or general election. The employee may choose to use accrued vacation or compensatory leave, or leave without pay to cover these periods.

An employee who is elected to a paid, partisan office or appointed to an elective paid, partisan office shall, upon written request to the appointing authority, be granted leave to serve in that office, except where prohibited by federal law. The use of accrued vacation or compensatory leave, or leave without pay to cover this period shall be at the discretion of the employee. The leave provided for in this rule need not exceed six years. An employee shall not be prohibited from returning to employment before the expiration of the period for which the leave was granted.

11—63.12(8A) Court appearances and jury duty. When in obedience to a subpoena, summons, or direction by proper authority, an employee appears as a witness or a jury member in any public or private litigation in which the employee is not a party to the proceedings, the employee shall be entitled to time off during regularly scheduled work hours with regular compensation, provided the employee gives to the appointing authority any payments received for court appearance or jury service, other than reimbursement for necessary travel or personal expenses. If the employee is directed to appear as a witness by the appointing authority, all time spent shall be considered to be worktime.

63.12(1) Hours spent on court or jury leave by an employee outside the employee's scheduled work hours are not subject to this rule, nor shall any payments received for court appearance or jury service be remitted to the appointing authority.

63.12(2) The employee shall notify the appointing authority immediately upon receipt of a subpoena, summons, or direction by proper authority to appear.

63.12(3) An employee may be required to report to work if there will be at least two hours in the workday, following necessary travel time, during which the employee is not needed for jury service or as a witness.

63.12(4) Upon return to work, the employee shall present evidence to the appointing authority of any payments received for court appearance or jury service.

11—63.13(8A) Voting leave. An employee who is eligible to vote in a public election in the state of Iowa may request time off from work with regular pay for a period not to exceed three hours for the purpose of voting. Leave shall be granted only to the extent that the employee's work hours do not allow a period of three consecutive hours outside the employee's scheduled work hours during which the voting polls are open.

A request for voting leave must be made to the appointing authority on or before the employee's last scheduled shift prior to election day. The time to be taken off shall be designated by the appointing authority.

11—63.14(8A) Disaster service volunteer leave. Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request

of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for the purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

11—63.15(8A) Absences due to emergency conditions. When a proper management authority closes a state office or building or directs employees to vacate a state office or building premises, employees may elect to use compensatory leave, vacation, or leave without pay to cover the absence. Employees may, with the approval of the appointing authority, elect to work their scheduled hours even though the state office or building is closed to the general public. Employees may, with the approval of the appointing authority, be permitted to make up lost time within the same workweek.

Employees who are unable to report to work as scheduled or who choose to leave work due to severe weather or other emergency conditions may, with the approval of the appointing authority, use compensatory leave, vacation, or leave without pay to cover the absence.

11—63.16(8A) Particular contracts governing. Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreements shall prevail for the employees covered by those agreements.

11—63.17(8A) Examination and interviewing leave.

63.17(1) Employees may be granted leave to take examinations for positions covered by merit system provisions. Employees may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(2) Employees may be granted the use of paid work time to attend interviews during scheduled work hours for jobs within their agency. For agencies that have statewide operations, the appointing authority may restrict the use of paid time to interviews within the central office, institution, county, region, or district office. A reasonable time limit for interviews may be designated by the appointing authority. Employees may be granted leave for interviews outside the agency, central office, institution, county, region, or district office in which case they may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

63.17(3) Appointing authorities shall post and make known to employees the provisions of this rule.

11—63.18(8A) Service on committees, boards, and commissions. State employees who are appointed to serve on committees, boards, commissions, or similar appointments for Iowa state government shall be entitled to regular compensation for such service. Employees shall be paid in accordance with these rules for time spent.

Pursuant to Iowa Code section 70A.1, employees shall not be entitled to additional compensation for such service.

Employees shall have actual and necessary expenses paid.

Employees shall notify the appointing authority at the time of the appointment.

11—63.19(8A) Donated leave for catastrophic illnesses of employees and family members. Employees are eligible to donate or receive donated leave hours for catastrophic illnesses of the employee or an immediate family member. Contributions shall be designated as "donated leave" and shall be subject to the rules, policies and procedures of the department.

63.19(1) Definitions:

"*Catastrophic illness*" means a physical or mental illness or injury of the employee, as certified by a licensed physician, that will result in the inability of the employee to work for more than 30 workdays on a consecutive or intermittent basis; or that will result in the inability of the employee to report to work for more than 30 workdays due to the need to attend to an immediate family member on a consecutive or intermittent basis.

“Donated leave” means vacation leave (hours) donated to employees as a monetary benefit only. Recipient employees will not accrue vacation or sick leave benefits on donated leave hours.

“Employee” means a full-time or part-time executive branch employee who is eligible to accrue vacation.

“Immediate family member” means the employee’s spouse, parent, son, or daughter, as defined in the federal Family and Medical Leave Act.

63.19(2) Program eligibility for employee illness. In order to receive donated leave for a catastrophic illness, an employee must:

- a. Have a catastrophic illness as defined by subrule 63.19(1); and
- b. Have exhausted all paid leave; and
- c. Not be supplementing workers’ compensation to the extent that it exceeds more than 100 percent of the employee’s pay for the employee’s regularly scheduled work hours on a pay-period-by-pay-period basis; and
- d. Not be receiving long-term disability benefits; and
- e. Be approved for and using or have exhausted Family and Medical Leave Act (FMLA) leave hours if eligible; and
- f. Be on approved leave without pay for medical reasons during any hours for which the employee will receive donated leave.

63.19(3) Program eligibility for immediate family member illness. In order to receive donated leave for a catastrophic illness of an immediate family member, the immediate family member must have a catastrophic illness as defined in subrule 63.19(1). The employee must:

- a. Have exhausted all paid leave for which eligible; and
- b. Be approved for and using or have exhausted Family and Medical Leave Act leave hours if eligible; and
- c. Be on approved leave without pay for the medical reasons of an immediate family member during any hours for which the employee will receive donated leave.

63.19(4) Certification requirements. The employee shall submit an application for donated leave on forms developed by the department. Appointing authorities may, at their department’s expense, seek second medical opinions or updates from physicians regarding the status of an employee’s or employee’s immediate family member’s illness or injury. If the employee is receiving FMLA leave, a second opinion must be obtained from a physician who is not regularly employed by the state.

63.19(5) Program requirements.

a. Vacation hours shall be donated in whole-hour increments; however, they may be credited to the recipient in other than whole-hour increments. All of the recipient’s accrued leave must be used before donations will be credited to the recipient. Hours will be credited in increments not to exceed the employee’s regularly scheduled work hours on a pay-period-by-pay-period basis. Recipients will not accrue vacation and sick leave on donated leave hours.

b. Approval of use of donated leave shall be for a period not to exceed one year either on an intermittent or continuous basis for each occurrence.

c. Donated leave shall be irrevocable after it is credited to the recipient. Donated hours not credited to the recipient will not be deducted from the donor’s vacation leave balance. Donated leave shall be credited on a first-in/first-out basis.

d. Donated leave for catastrophic illness will not restrict the right to terminate probationary employees. The period of probationary status and the pay increase eligibility date, if in excess of 30 days, will be extended by the amount of time the employee received donated leave.

e. Appointing authorities shall post a form developed by the department indicating that the employee is eligible to receive donated leave and the name of the person to contact for the donation. The appointing authority is not responsible for posting outside the employing department; however, donated leave hours can be received from executive branch employees outside the employing department.

f. Leave without pay rules and procedures shall apply to the following benefits: health, dental, life, and long-term disability insurances; pretax; deferred compensation; holiday pay, sick leave and vacation leave accrual, shift differential pay, longevity pay and cash payments. In addition, employees

receiving donated leave for catastrophic illness for themselves or their immediate family member will not be eligible for leadworker pay, extraordinary duty pay or special duty pay. If FMLA leave and donated leave for a catastrophic illness are used concurrently, the state is obligated to pay its share of health and dental insurance premiums. The state also maintains an employee's basic life and long-term disability insurances during periods of FMLA leave.

g. Employees may choose to continue or terminate optional deductions (e.g., miscellaneous insurance, savings bonds, charitable contributions, or credit union deductions) while using donated leave. Mandatory deductions are taken from gross pay first, then optional deductions as funds are available and as authorized by the employee. Union dues deductions will continue as long as the employee has sufficient earnings to cover the dollar amount certified to the employer after deductions for social security, federal taxes, state taxes, retirement, health and dental insurance, and life insurance.

h. Contributions to the employee's dependent care account will not be allowed during a period of leave without pay. Claims will not be paid for dependent care while an employee is on leave without pay.

i. If an employee applies for and is approved to receive long-term disability, the employee may continue to receive leave contributions for up to one year on an intermittent or continuous basis or the effective date of the employee's long-term disability, whichever comes first. Donated leave hours not used are not credited to the recipient and are not deducted from the donor's vacation leave balance.

11—63.20(8A,70A) Bone marrow and organ donation leave. Employees, excluding employees covered by a collective bargaining agreement that provides otherwise, shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapter 70A.

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¹ Effective date of subrule 14.2(12) delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83.

CHAPTER 64

BENEFITS

[Prior to 8/15/86; See Deferred Compensation Program, 270—Ch 4]

[Prior to 1/7/04, see 581—Ch 15]

11—64.1(8A) Health benefits. The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A. The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—64.2(8A) Dental insurance. The director is authorized by the executive council of Iowa to administer dental insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—64.3(8A) Life insurance. The director is authorized by the executive council of Iowa to administer life insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—64.4(8A) Long-term disability insurance. The director is authorized by the executive council of Iowa to administer long-term disability insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

Employees who receive loss of time benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—64.5(8A) Health benefit appeals. A member who disagrees with a group health benefit company's decision on the application of group contract benefits may:

1. File a written appeal with the respective company as defined in the group contract, or
2. File a written appeal with the commissioner of insurance at the department of commerce.

11—64.6(8A) Deferred compensation.

64.6(1) Definitions. The following definitions shall apply when used in this rule:

"Account" means any fixed annuity contract, variable annuity contract, life insurance contract, documents evidencing mutual funds, variable or guaranteed investments, or combination thereof provided for in the plan.

"Beneficiary" means the person or estate entitled to receive benefits under the plan following the death of the participant.

"Director" means the director of the Iowa department of administrative services.

"Employee" means a nontemporary (permanent full-time or permanent part-time) employee of the employer, including full-time elected officials and members of the general assembly, except employees of the board of regents. For the purposes of enrollment, elected officials-elect and members-elect of

the general assembly shall be considered employees. Persons in a joint employee relationship with the employer shall not be considered employees eligible to participate in the plan.

“Employer” means the state of Iowa and any other governmental employer that participates in the plan. Effective July 1, 2003, “employer” shall also include any governmental entity located within the state of Iowa that enters into an agreement to allow its employees to participate in the plan.

“Fiduciary” means a person or company that manages money or property for another and that must exercise the standard of care imposed by law or contract. For the purpose of these rules, “fiduciary” means the trustee, the plan administrator, investment providers, and the persons they designate to carry out or help carry out their duties or responsibilities as fiduciaries under the plan.

“Governing body” means the executive council of the state of Iowa.

“Group” means one or more employees.

“Investment provider” means a company authorized under this rule to issue an account or administer the records of such an account or accounts under the deferred compensation plan authorized by Iowa Code section 509A.12 and 2003 Iowa Code Supplement section 8A.402.

“Normal retirement age” means 65 years of age, unless an employee declares a different age pursuant to the plan’s catch-up provision. The age cannot be earlier than a year in which the employee is eligible to receive retirement benefits without an age reduction penalty from the employer-sponsored retirement plan.

“Participating employee” or *“participant”* means any employee or former employee of the employer who is currently deferring or who has previously deferred compensation under the plan and who retains the right to benefits under the plan.

“Plan” means the state of Iowa employee contribution plan for deferred compensation as authorized by Internal Revenue Code Section 457, Iowa Code section 509A.12, and 2003 Iowa Code Supplement section 8A.434.

“Plan administrator” means the designee of the director who is authorized to administer the plan.

“Plan year” means a calendar year.

“Retirement investors’ club” means the voluntary retirement savings program for employees designed to increase personal long-term savings. The program contains three plans, the 457 employee contributions plan, the 401(a) employer contribution plan, and the 403(b) tax-sheltered annuity plan.

“Trust” means the Iowa state employee deferred compensation trust fund created in the state treasury and under the control of the department.

“Trustee” means the director of the Iowa department of administrative services.

64.6(2) Plan administration.

a. *Director’s authorization.* The director is authorized by the governing body to administer a deferred compensation program for eligible employees and to enter into contracts and service agreements with deferred compensation investment providers for the benefit of eligible employees and on behalf of the state of Iowa and other eligible employers. This rule shall govern all investment options and participant activity for the funds placed in the program.

b. *Plan modification.* The trustee may at any time amend, modify, or terminate the plan without the consent of the participant (or any beneficiary thereof). The plan administrator shall provide to participating employees and investment providers sufficient notice of all amendments to the plan. No amendment shall deprive participants of any of the benefits to which they are entitled under the plan with respect to deferred amounts credited to their accounts before the effective date of the amendment. If the plan is curtailed or terminated, or the acceptance of additional deferred amounts is suspended permanently, the plan administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred before the amendment, modification, or termination. Payment of benefits will be deferred until the participant would otherwise have been entitled to a distribution pursuant to the provisions of the plan.

c. *Location of account documentation.* The investment providers shall send the original annuity policies, contracts or account forms to the plan administrator. Failure to do so may result in termination of an investment provider’s contract or service agreement. The plan administrator shall keep all such original documents. Participating employees may review their own documentation during normal work

hours at the department, but may not under any circumstances remove the documentation from the premises.

d. Not an employment contract. Participation in this plan by an employee shall not be construed to give a contract of employment to the participant or to alter or amend an existing employment contract of the participant, nor shall participation in this plan be construed as affording to the participant any representation or guarantee regarding the participant's continued employment.

e. Tax relief not guaranteed. The employer, trustee, and the investment providers do not represent or guarantee that any particular federal or state of Iowa income, payroll, personal property or other tax consequences will result because of the participant's participation in the plan. The participant is obligated to consult with the participant's own tax representative regarding all questions of federal or state of Iowa income, payroll, personal property or other tax consequences arising from participation in the plan.

f. Investment agents. The investment providers shall, subject to the trustee's consent, have the power to appoint agents to act for the investment providers in the administration of accounts according to the terms, conditions, and provisions of their contracts or service agreements with the plan. Investment providers are responsible for the conduct of their agents, including their adherence to the plan document and administrative rules. The plan administrator may require an investment provider to remove the authority of any agent to provide services to the plan or plan participants when cause has been shown that the agent has violated these rules or state or federal law or regulation related to the governance of the plan or agent conduct.

g. Plan expenses. Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, record-keeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term interest that has accrued in the deferred compensation trust fund created by Iowa Code section 8A.434 prior to the allocation of funds to a participant's chosen investment provider. Such expenses may also be funded from fees assessed to eligible employers who choose to offer the plan to their employees.

h. Time periods. As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan administrator, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution methods.

i. Supplementary information and procedures. Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes only and shall not override any provision of the plan or give any person any claim or right not provided for under the plan. In the event any form or other document used in administering the plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.

j. Binding plan. The plan, and any properly adopted amendments, shall be binding on the parties and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.

64.6(3) Rights of participating employees.

a. Exclusive benefit. The trustee shall hold the assets and income of the plan for the exclusive benefit of the participating employee or the participating employee's beneficiary.

b. Creditors. The accounts of a participating employee under the plan shall not be subject to creditors of the participating employee or the participant's beneficiary and shall be exempt from execution, attachment, prior assignment, or any other judicial relief, or order for the benefit of creditors or other third persons.

c. Designation of beneficiary. Upon enrollment, a participating employee must designate a beneficiary or beneficiaries. An employee who has an open account with an investment provider that is no longer able to open new accounts may change the employee's designated beneficiary or beneficiaries

at any time thereafter by providing the plan administrator with written notice of the change on the form prescribed by the plan administrator. An employee who has an open account with an investment provider that is able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by completing the investment provider's beneficiary change form.

d. Assignment. Neither a participating employee, nor the participating employee's beneficiary, nor any other designee shall have the right to commute, sell, assign, transfer, borrow, alienate, use as collateral or otherwise convey the right to receive any payments.

64.6(4) Trust provisions.

a. Investment options. The trustee shall adopt various investment options for the investment of deferred amounts by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

b. Designation of fiduciaries. The trustee, the plan administrator, and the persons they designate to carry out or help carry out their duties or responsibilities are fiduciaries under the plan. Each fiduciary has only those duties or responsibilities specifically assigned to fiduciaries under the plan, contractual relationship, trust, or as delegated to fiduciaries by another fiduciary. Each fiduciary may assume that any direction, information, or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction, or information. No fiduciary will be responsible for the malfeasance, misfeasance, or nonfeasance of any other fiduciary, except where the fiduciary participated in such conduct, or knew or should have known of such conduct in the discharge of the fiduciary's duties under the plan and did not take reasonable steps to compel the cofiduciary to redress the wrong.

c. Fiduciary standards.

(1) All fiduciaries shall discharge their duties with respect to the plan and trust solely in the interest of the participating employees and their beneficiaries and in accordance with Iowa Code section 633.123. Such duties shall be discharged for the exclusive purpose of providing benefits to the participating employees and beneficiaries and, if determined applicable, defraying expenses of the plan.

(2) The investment providers shall discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and as defined by applicable Iowa law.

d. Trustee powers and duties. The trustee may exercise all rights or privileges granted by the provisions of the plan and trust and may agree to any alteration, modification or amendment of the plan. The trustee may take any action respecting the plan or the benefits provided under the plan that the trustee deems necessary or advisable. Persons dealing with the trustee shall not be required to inquire into the authority of the trustee with regard to any dealing in connection with the plan. The trustee may employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist, and may act without independent investigation upon their recommendations. Instead of acting personally, the trustee may employ one or more agents to perform any act of administration, whether or not discretionary.

e. Trust exemption. This trust is intended to be exempt from taxation under IRC Section 501(a) and is intended to comply with IRC Section 457(g). The trustee shall be empowered to submit or designate appropriate agents to submit the plan and trust to the IRS for a determination of the eligibility of the plan under IRC Section 457, and the exempt status of the trust under IRC Section 501(a), if the trustee concludes that such a determination is desirable.

f. Held in trust. Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Iowa. All plan assets shall be held under one or more of the following methods:

(1) Compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, compensation deferred under the plan shall be transferred

to a trust established under the plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(2) Notwithstanding any contrary provision of the plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the plan or held in a custodial account as described in subparagraph (3) below. For this purpose, the term “annuity contract” does not include a life, health or accident, property, casualty, or liability insurance contract. Amounts of compensation deferred under the plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a contract described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(3) Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the plan or held in an annuity contract as described in subparagraph (2) above. For purposes of this subparagraph, the custodian of any custodial account created pursuant to the plan must be a bank, as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of Treasury Regulations Section 1.408-2(e)(2) to (6) relating to the use of nonbank trustees.

Amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

64.6(5) *Absolute safeguards of the employer, trustee, their employees, and agents.*

a. Questions of fact. The trustee and the plan administrator are authorized to resolve any questions of fact necessary to decide the participating employee’s rights under the plan. An appeal of a decision of the plan administrator shall be made to the trustee, or the trustee’s designee, who shall render a final decision on behalf of the plan.

b. Plan construction. The trustee and the plan administrator are authorized to construe the plan and to resolve any ambiguity in the plan and to apply reasonable and fair procedures for the administration of the plan. An appeal of a decision of the plan administrator shall be made to the trustee, or the trustee’s designee, within 30 days of the plan administrator’s decision. The trustee, or the trustee’s designee, shall render a final decision on behalf of the plan.

c. No liability for loss. The participating employee specifically agrees that the employer, the plan, the trustee, the plan administrator, or any other employee or agent of the employer shall not be liable for any loss sustained by the participating employee or the participating employee’s beneficiary for the nonperformance of duties, negligence, or any other misconduct of the above-named persons except that this paragraph shall not excuse malicious or wanton misconduct.

d. Payments suspended. The trustee, plan administrator, investment providers, their employees and agents, if in doubt concerning the correctness of their actions in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment, or until the filing of an administrative appeal under Iowa Code chapter 17A, and thereafter in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them.

e. Court costs. The employer, the plan, the trustee, the plan administrator, their employees and agents are hereby held harmless from all court costs and all claims for the attorneys’ fees arising from

any action brought by the participating employee, or any beneficiary thereof, under the plan or to enforce their rights under the plan, including any amendments of the plan.

64.6(6) Eligibility. Except employees of the board of regents, any nontemporary executive, judicial or legislative branch employee, or employee of a governmental employer that enters into an agreement to join the plan, who is regularly scheduled for 20 or more hours of work per week or who has a fixed annual salary is eligible to defer compensation under this rule. An elected official-elect and elected members-elect of the general assembly are also eligible provided that deductions meet the requirements set forth in the plan. Final determination on eligibility shall rest with the plan administrator.

64.6(7) Communications.

a. Forms. All enrollments, elections, designations, applications and other communications by or from an employee, participant, beneficiary, or legal representative of any such person regarding that person's rights under the plan shall be made in the form and manner established by the plan administrator and shall be deemed to have been made and delivered only upon actual receipt by the person designated to receive such communication. The employer or the plan shall not be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form.

b. Notices mailed. All notices, statements, reports, and other communications from the plan to any employee, participant, beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first-class mail to, such person at that person's last mailing address appearing on the plan records.

64.6(8) Disposition of funds while employed.

a. Unforeseeable emergency. A participating employee may request that the plan administrator allow the withdrawal of some or all of the funds held in the participating employee's account based on an unforeseeable emergency. Forms must be completed and returned to the plan administrator for review in order to consider a withdrawal request. The plan administrator shall determine whether the participating employee's request meets the definition of an unforeseeable emergency as provided for in federal regulations. In addition to being extraordinary and unforeseeable, an unforeseeable emergency must not be reimbursable:

- (1) By insurance or otherwise;
- (2) By liquidation of the participating employee's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (3) By cessation of deferrals under the plan.

Upon the plan administrator's approval of an unforeseeable emergency distribution, the participating employee will be required to stop current deferrals for a period of no less than six months.

A participating employee who disagrees with the initial denial of a request to withdraw funds on the basis of an unforeseeable emergency may request that the trustee or the trustee's designee reconsider the request by submitting additional written evidence of qualification or reasons why the request for withdrawal of funds from the plan should be approved. All such requests must be in writing and be received by the trustee, or the trustee's designee, within 30 calendar days of the date of the initial denial. Requests received after 30 days will be rejected as untimely, and the initial denial shall become final agency action.

b. Voluntary in-service distribution. A participant who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the participant under the plan if the following requirements are met:

- (1) The total amount payable to the participant under the plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater);
- (2) The participant has not previously received an in-service distribution of the total amount payable to the participant under the plan;
- (3) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and
- (4) The participant elects to receive the distribution.

The plan administrator may also elect to distribute the accumulated account value of a participant's account without consent, if the above criteria are met.

This provision is available only once in the lifetime of the participating employee. If funds are distributed under this provision, the participating employee is not eligible under the plan to utilize this provision at any other time in the future.

c. Transfers under domestic relations orders.

(1) To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a participating employee's account may be paid or set aside for payment to a spouse, former spouse, or child of the participating employee. The plan will determine whether the judgment, decree, or order is valid and binding on the plan and whether it is issued by a court or agency with jurisdiction over the plan. The judgment, decree or order must specify which of the participating employee's accounts are to be paid or set aside, the valuation date of the accounts and, to the extent possible, the exact value of the accounts. Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose investment providers in the same manner as the participating employee. Unless otherwise subsequently suspended or altered by federal law, all applicable taxes shall be withheld and paid from this lump sum distribution. The provisions of this subparagraph shall not be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under IRC Section 457.

(2) A right to receive benefits under the plan shall be reduced to the extent that any portion of a participating employee's account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to these rules or to the extent that the employer or the plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of any account or of any distributions therefrom. The participating employee shall be deemed to have released the employer and the plan from any claim with respect to such amounts in any case in which:

1. The department, the retirement investors' club, or the plan has been served with legal process or otherwise joined in a proceeding relating to such amounts,

2. The participating employee has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the employer or a plan representative to the participating employee's last-known mailing address, and

3. The participating employee fails to obtain an order of the court in the proceeding relieving the employer and the plan from the obligation to comply with the judgment, decree, or order.

(3) The department, the retirement investors' club or the plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the participating employee's account or of any distribution therefrom.

64.6(9) *Investment providers.*

a. Participation. The investment providers under the plan are authorized to offer new accounts and investment products to employees only if awarded a contract or service agreement through a competitive bid process. A list of active investment providers shall be provided, upon request, to any employee or other interested party. Inactive investment providers shall participate to the extent necessary to fully discharge their duties under the applicable federal and state laws and regulations, the plan, their service agreements or contracts with the employer, and their investment accounts or contracts with participating employees.

b. Investment products. Investment products shall be limited to those that have been approved by the plan administrator. No new accounts shall be available to employees for life insurance under the plan.

c. Reports and consolidated statements. The investment providers will provide various reports to the plan administrator as well as consolidated statements, newsletters, and performance reports to participants as specified in the service agreements or contracts with investment providers.

d. Dividends and interest. The only dividend or interest options available on policies or funds are those where the dividend or interest remains within the account to increase the value of the account.

e. Minimum contract requirements. In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.

f. Removal from participation. Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.

64.6(10) Marketing and education.

a. Orientation and information meetings. Employers may hold orientation and information meetings for the benefit of their employees during normal work hours using materials developed and approved by the plan administrator. Active investment providers may make authorized presentations upon approval of individual agency or department authorities during nonwork hours. There shall be no solicitation of employees by investment providers at an employee's workplace during the employee's working hours, except as authorized in writing by the plan administrator.

b. General requirements for solicitation.

(1) An active investment provider may solicit business from participants and employees through representatives, the mail, or direct presentations.

(2) Active investment providers and representatives may solicit business at an employer's work site only with the prior permission of the agency director or other appropriate authority.

(3) Investment providers or representatives may not conduct any activity with respect to a registered investment option unless the appropriate license has been obtained.

(4) An investment provider or representative may not make a representation about an investment option that is contrary to any attribute of the option or that is misleading with respect to the option.

(5) An investment provider or representative may not state, represent, or imply that its investment options are endorsed or recommended by the plan administrator, the employing agency, the state of Iowa, or an employee of the foregoing.

(6) An investment provider or representative may not state, represent, or imply that its investment option is the only option available under the plan.

c. Disclosure.

(1) Enrollment. When soliciting business for an investment product, an active investment provider or representative shall provide each participating employee or eligible employee with a copy of the approved disclosure for that option. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. An active investment provider shall notify the plan administrator in writing if the investment provider will be marketing its investment options through representatives. The notification must contain a complete identification of the representatives who will be marketing the options. Every representative and agent who enrolls eligible employees in the plan and is authorized by the investment provider to sign plan forms must be included on this notification.

(2) Disbursement methods and account values. When discussing distribution methods for an investment option, investment providers or representatives shall disclose to each participating employee or eligible employee all potential distribution methods and the potential income derived from each method for that option.

d. Approval of a disclosure form.

(1) An investment provider shall complete and submit to the plan administrator a disclosure form for each approved investment product. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. An investment provider shall complete a disclosure form on each investment product that has participating employee funds (including those no longer offered).

(2) If changes occur during the plan year, any changes must be submitted to the plan administrator for approval prior to their implementation. Disclosure forms will be updated quarterly. Even if no changes occur, an investment provider shall resubmit its disclosure form to the plan administrator for approval every year.

(3) If an investment provider or representative materially misstates a required disclosure or fails to provide disclosure, the plan administrator may sanction the investment provider or bind the investment provider to the disclosure as stated on the form.

e. Confidentiality. The plan administrator may provide to all active investment providers any information that can be made available under the department's rules. Notwithstanding any rule of the department to the contrary, the plan administrator shall make available to all active investment providers the names and home addresses of all state employees. The plan administrator may assess reasonable costs to the active investment providers to defray the expense of producing any requested information. All information obtained under the plan shall be confidential and used exclusively for purposes relating to the plan and as expressly contemplated by the service agreement or contract entered into by the investment provider.

f. Number of investment providers. Only investment providers that are selected through a competitive bid process, that are subsequently awarded a contract or service agreement, and that are authorized to do business in the state of Iowa may sell annuities, mutual funds or other approved products under the plan, and then only if the investment providers agree to the terms, conditions, and provisions of the contract or service agreement.

64.6(11) Investment option removal/replacement. The plan administrator may determine that an investment option offered under the plan is no longer acceptable for inclusion in the plan. If the plan administrator decides to remove an investment option from the plan as the result of the option's failure to meet the established evaluation criteria and according to the recommendations of consultants or advisors, the option shall be removed or phased out of the plan. Employees newly enrolling in the plan shall be informed in writing that investment options that do not meet the evaluation criteria are not open to new enrollments.

a. Notice to participant. Any participating employees already deferring to the investment option being phased out shall be informed in writing that they need to redirect future deferrals from this option to an alternative investment option offered under the plan by notifying the investment provider, unless otherwise directed, of their new investment choice.

b. Automatic transfer. If any participating employee has failed to move a remaining account balance from the investment option being phased out, the plan administrator shall instruct an investment provider to automatically move that participating employee's account balance into another designated alternative investment option offered under the plan.

c. Reexamination. At any time during this process, the plan administrator may reexamine the performance of the investment option being phased out and the recommendations of consultants and advisors to determine if continued inclusion of the investment option in the plan is justified.

64.6(12) Demutualization of investment providers.

a. Ballots. An investment provider that is a mutual company and that provides any annuity product or life insurance product held under the plan shall provide the plan administrator with a ballot(s) for official vote registration. The ballot(s) shall be completed and returned to the company according to the specified deadline in the instructions. The ballot(s) shall include the owner's name, policy numbers of affected contracts, name of annuitant or insured, number of shares anticipated, and the control number for the group of shares.

b. Policyholder booklet. The company shall provide the plan administrator with a policyholder booklet, as well as instructions and guide information, prior to or in conjunction with the delivery of the ballot(s). Notices of progress, time frames and meetings will also be provided to the plan administrator as such information becomes available.

c. Method of compensation. Compensation will be provided in cash according to the terms of the demutualization plan. In the event that stocks are issued in lieu of cash, the company shall provide a listing which includes participants' names, social security numbers, policy numbers, and number of shares pro rata.

d. Liquidation of stock. An arrangement will be entered into between the plan administrator and a stockbroker as soon as administratively possible in order to liquidate the stock for cash. The broker

shall retain commission fees according to the arrangement entered into from the value obtained at the time of sale. The employer will not realize a tax liability nor will the participating employees.

e. Deposit of proceeds. The proceeds of the sale of the stock, less the broker commission, and any dividends issued prior to the sale of the stock, shall be made payable to the plan. Cash shall be deposited into the plan's trust fund until payment instructions are received from the participant or the participant's beneficiary.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 1568C, IAB 8/6/14, effective 9/10/14]

11—64.7(8A) Dependent care. The director administers the dependent care flexible spending account plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. The plan is also a dependent care assistance plan under IRC Section 129. Administration of the plan shall comply with all applicable federal regulations, the Plan Document, and the Summary Plan Description. For purposes of this rule, the plan year is a calendar year.

64.7(1) Employee eligibility. All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the dependent care flexible spending plan. Temporary employees are not eligible to participate in this plan.

64.7(2) Enrollment. An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing dependent care deduction amounts during the plan year provided that they have a qualifying change in family status as defined in the Plan Document and the Summary Plan Description. To continue participation, employees shall reenroll each year during the open enrollment period.

64.7(3) Termination of participation in the plan. An employee may terminate participation in the plan provided that the employee has a qualifying change in status as defined in the Summary Plan Description. Employees who terminate state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

11—64.8(8A) Premium conversion plan (pretax program). The director administers the premium conversion plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. Pursuant to IRC Section 105, the plan is also an insured health care plan to the extent that participants use salary reduction to pay for health or dental insurance premiums. In accordance with IRC Section 79, the plan is also a group term life insurance plan to the extent that salary reduction is used for life insurance premiums. Administration of the plan shall comply with all federal regulations and the Plan Document. For purposes of this rule, the plan year is January 1 to December 31 of each year.

64.8(1) Employee eligibility. All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the pretax conversion plan. Temporary employees are not eligible to participate in the plan.

64.8(2) Enrollment. An enrollment and change period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless an election form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in status as defined in the Plan Document.

64.8(3) Termination of participation in the plan. An employee may terminate participation in the plan during an open enrollment period. Otherwise, an employee may terminate participation if the employee has a qualifying change in status as defined in the Plan Document.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—64.9(8A) Interviewing and moving expense reimbursement.

64.9(1) Interviewing expenses. If reimbursement is approved by the appointing authority, a person who interviews for state employment shall be reimbursed for expenses incurred in order to interview. Reimbursement shall be at the same rate at which an employee is reimbursed for expenses incurred during the performance of state business.

64.9(2) *Moving expenses for reassigned employees.* A state employee who is reassigned at the direction of the appointing authority shall be reimbursed for moving and related expenses in accordance with the policies of the department of administrative services or the applicable collective bargaining agreement. Eligibility for reimbursement shall occur when all of the following conditions exist:

- a. The employee is reassigned at the direction of the appointing authority;
- b. The reassignment requires a permanent change in duty station beyond 25 miles;
- c. The employee must change the employee's place of personal residence beyond 25 miles unless the department of administrative services has given prior written approval; and
- d. The reassignment is for the primary benefit of the state.

64.9(3) *Moving expenses for newly hired or promoted employees.* If reimbursement is approved by the appointing authority, a person newly hired or promoted may be reimbursed for moving and related expenses. Reimbursement shall be at the same rates used for the reimbursement of a current employee who has been reassigned. Reimbursement shall not occur until the employee is on the payroll.

64.9(4) *Temporary living expenses.* An employee may be reimbursed for up to 90 days of temporary living expenses. Such reimbursement shall be included as part of the total amount reimbursable under the relocation policy.

64.9(5) *Repayment.* As a condition of receiving reimbursement for moving expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period following the date of receipt of reimbursement that is deemed by the appointing authority to be commensurate with the amount of reimbursement received. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority a proportionate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

11—64.10(8A) Education financial assistance. Education financial assistance may be granted for the purpose of assisting employees in developing skills that will improve their ability to perform job responsibilities. Assistance may be in the form of direct payment to the organization or institution or by reimbursement to the employee as provided for in subrule 64.10(4).

64.10(1) *Employee eligibility.* Any nontemporary employee may be considered for education financial assistance.

64.10(2) *Workshop, seminar, or conference attendance.* The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

a. Assistance may be approved for meeting continuing education requirements when necessary to maintain a professional registration, certification, or license related to the duties and responsibilities of the employee's position.

b. Payment of registration fees and other costs, such as lodging, meals, and travel, shall be in accordance with the policies and procedures of the department of administrative services.

c. If attendance is outside the state of Iowa, travel must first be authorized by the executive council pursuant to 2003 Iowa Code Supplement section 8A.512.

64.10(3) *Educational institution coursework.* Education financial assistance to an employee taking academic courses at an educational institution, with or without educational leave, shall require the preapproval of the appointing authority and the director. Requests for reimbursement shall be on forms prescribed by the director.

a. An employee may take academic courses at any accredited educational institution (university, college, area community college) within the state. Attendance at an out-of-state institution may be approved provided that there are geographical or educational considerations which make attendance within the state impractical.

b. Reimbursement requests shall be made to the director before the employee takes the courses. If the director does not approve the request, the employee shall not be reimbursed.

c. Reimbursement may be approved for courses taken to meet continuing education requirements when necessary to maintain a professional registration, certification, or license when the courses relate to the duties and responsibilities of the employee's position.

d. An employee receiving other financial assistance, such as scholarship aid or Veterans Administration assistance, shall be eligible to receive education financial assistance only to the extent that the total of all methods of reimbursement does not exceed 100 percent of the payment of expenses.

e. In order for the employee to be reimbursed, the employee's department shall submit to the department of administrative services the employee's original paid receipt from the educational institution, the approved education financial assistance form, and proof of the employee's successful completion of the courses as follows:

- (1) Undergraduate courses shall require at least a "C-" grade.
- (2) Graduate courses shall require at least a "B-" grade.
- (3) Successful completion of vocational or correspondence courses or continuing education courses shall require an official certificate, diploma or notice.

64.10(4) *Repayment.* As a condition of applying for reimbursement for education expenses, the recipient must sign an agreement to continue employment with the appointing authority. The agreement must be signed prior to approval and will stipulate the period of time deemed by the appointing authority to be commensurate with the amount of reimbursement received. The period of time commences upon successful completion of the course. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority an appropriate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

64.10(5) *Annual report.* The appointing authority shall report to the director and legislative council, not later than October 1 of each year, the direct and indirect costs to the department for education financial assistance granted to employees during the preceding fiscal year in a manner prescribed by the director. [ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—64.11(8A) Particular contracts governing. Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreement shall prevail for employees covered by the collective bargaining agreements.

11—64.12(8A) Tax-sheltered annuities (TSAs).

64.12(1) *Administration.* The director is authorized by 2003 Iowa Code Supplement section 8A.402 to administer a tax-sheltered annuity program for eligible employees.

64.12(2) *Definitions.* The following definitions shall apply when used in this rule:

"Company" means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under Iowa Code section 8A.438.

"Employee" means an employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system, or an employee of a participating employer.

"Employer" means the state of Iowa, a public school district in the state of Iowa, an area education agency in the state of Iowa, or a community college in the state of Iowa.

"Participating employee" means an employee participating in the plan.

"Participating employer" means an employer that has elected to join the state's tax-sheltered annuity plan.

"Plan" means the tax-sheltered annuity plan authorized in Iowa Code section 8A.438.

"Plan administrator" means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

“Plan year” means a calendar year.

“Policy” means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and Iowa Code section 8A.438.

“Salary reduction form” means the tax-sheltered annuity form signed by the participating employee to begin or change payroll deductions.

64.12(3) Eligibility.

a. Initial eligibility. Any employee who works for the department of education, the board of regents administrative office, or a participating employer is eligible to participate in this plan. Participating employers may establish different eligibility requirements, as long as the requirements conform to IRC Section 403(b) and the applicable federal regulations. Final determination on eligibility shall rest with the plan administrator.

b. Eligibility after terminating reduction of compensation. Any employee who terminates the reduction of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4) “a” and “b” and 64.12(6) “a.”

64.12(4) Enrollment and termination.

a. Enrollment. State employees may enroll in the plan at any time. Participating employers may establish different enrollment periods, as long as the periods conform to IRC Section 403(b) and the applicable federal regulations. The salary reduction form must be submitted to the employing agency’s personnel assistant or payroll office for approval.

b. Forms submission. State personnel assistants shall provide the plan administrator with the salary reduction form in a timely manner.

c. Termination of salary reductions. A participating employee may terminate salary reductions by providing to the employing agency’s personnel assistant or payroll office written notification on a form required by the plan administrator.

d. Availability of forms. It is the responsibility of each employee interested in participating in the plan to obtain the necessary forms from the investment provider.

64.12(5) Tax status.

a. FICA and IPERS. The amount of compensation reduced under the salary reduction form shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

b. Federal and state income taxes. The amount of earned compensation reduced under the form is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

64.12(6) Reductions from earnings.

a. Salary reduction amount changes. Participating employees may increase or decrease their salary reduction amount by providing to their personnel assistant or payroll office written notice on a form required by the plan administrator. Salary reduction amounts may be changed to permit a one-time lump sum contribution from the last paycheck due to termination of employment.

b. Maximum salary reduction limits. Employees’ salary reductions may not exceed the maximum limit set forth in federal law.

c. Minimum salary reduction amount. Participating employers may establish a minimum amount as long as the minimum conforms to IRC Section 403(b) and the applicable federal regulations.

64.12(7) Companies.

a. Time of payment. Participating employers shall transmit amounts within 15 business days after the end of the calendar month.

b. Cooperation with third-party administrator. Companies are required to cooperate with the plan’s third-party administrator, including the provision of daily account information as well as any other data or information required for administration of the plan.

c. Annual status report. Each company shall provide to the participating employee at the employee’s home address an annual status report stating the value of each participant’s policy. This practice shall be continued even after the participating employee terminates or stops contributions to the

plan. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

d. Crediting of accounts. Companies must minimize crediting errors and provide timely and reasonable credit resolution.

e. Solicitation. There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator or participating employer.

f. Dividends. The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

g. Removal from participation. Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

64.12(8) Disposition of funds.

a. Distribution eligibility. An employee is eligible for a distribution of funds based upon any of the following circumstances: severance of employment; reaching age 59½; becoming disabled; qualifying for a financial hardship; or becoming eligible for a reservist distribution. Distribution will be made in accordance with applicable IRS regulations.

b. Financial hardship. A participating employee may request to withdraw some or all of the salary reduction contributions to the policy, but not the income earned thereon, based on a financial hardship and in accordance with 401(k) regulations. New contributions to the plan will not be allowed after the receipt of a distribution based on financial hardship until such time as allowed by law.

c. Federal and state withholding taxes. It is the company's responsibility, when making payments to an employee, to withhold the required federal and state income tax, to timely remit the tax to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099-R.

d. Federal penalties. Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). An IRC Section 403(b) contract is a qualified plan for these purposes.

64.12(9) General.

a. Orientation and information meetings. Employers may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings without employer approval.

b. Company changes.

(1) If a participating employee wishes to redirect contributions to another company, the employee shall submit a form to the personnel assistant or payroll office in accordance with paragraph 64.12(6) "a."

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy, if allowed under the participating employer's plan elections, in accordance with the plan's policies and applicable IRC Section 403(b) provisions.

c. Deferred compensation or tax-sheltered annuity participation—maximum contribution. State employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to contribute to one plan or the other, but not to both at the same time.

d. Direct transfer/rollover.

(1) Effective January 1, 2002, a former employee may request a direct transfer/rollover to an eligible retirement plan as defined in IRC Section 402(c)(8)(B). Eligible rollover amounts that are received by a former employee are subject to mandatory federal and state withholding as required by law.

(2) An employee may request a trustee-to-trustee transfer of funds to a defined benefit governmental plan for the purchase of permissive service credit.

64.12(10) Forfeiture. IRC Section 403(b)(1)(C) provides that an employee's interest in an IRC Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

64.12(11) *Nontransferability.* The employee's interest in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose. [ARC 8265B, IAB 11/4/09, effective 12/9/09]

11—64.13(8A) Health flexible spending account. The director administers the health flexible spending account plan for employees of the state of Iowa. The program is permitted under IRC Section 125. Administration of the plan shall comply with all applicable federal regulations and the Plan Document. To the extent that the provisions of the Plan Document or administrative rule conflict with IRC Section 125, the provisions of IRC Section 125 shall govern. For purposes of this rule, the plan year is a calendar year.

64.13(1) *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the health flexible spending account plan. Temporary employees are not eligible to participate in this plan. Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.

64.13(2) *Enrollment.* An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing health flexible spending account salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. To continue participation, employees shall reenroll each year during the open enrollment period.

64.13(3) *Modification or termination of participation in the plan.* An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. Employees who have terminated state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

64.13(4) *Continuation of coverage.* The health flexible spending account plan shall provide the opportunity to continue coverage as required by applicable state and federal laws.

64.13(5) *Eligible health care expenses.* The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC Section 213.

64.13(6) *Acceptable proof of eligible expense.* Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC Sections 105 and 106; and the amount of such expense.

64.13(7) *Appeal process.* In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account plan, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the plan, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

64.13(8) *Third-party administrator.* The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account plan.

11—64.14(8A) Deferred compensation match plan. The director is authorized by the governing body to administer a deferred compensation match plan for employees of the state of Iowa and employees of other eligible participating governmental employers. The plan shall be qualified under IRC Section 401(a) and Iowa Code section 509A.12. The assets and income of the plan shall be held in trust for the exclusive benefit of the participating employee or the participating employee's beneficiary. The trustee shall be the director of the department of administrative services. The director shall adopt various

investment options for the investment of plan funds by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

The plan shall match eligible participant contributions to the deferred compensation plan with contributions by the employer. Eligibility of participants and the rate of employer matching contributions shall be subject to determination by the trustee and the governing body. The only voluntary contributions by participants that the plan shall accept are eligible rollover contributions.

11—64.15(8A) Insurance benefit eligibility.

64.15(1) Full-time and part-time employees with probationary or permanent status who work 20 or more hours a week are eligible for health and dental insurance coverage. For employees working 20 to 29 hours per week, the state's share of the premium is one-half the amount paid for full-time employees (30 to 40 hours per week). Temporary employees are not eligible for health or dental insurance.

64.15(2) Full-time employees with probationary or permanent status who work 30 or more hours a week are eligible for life and long-term disability insurance coverage. Temporary employees are not eligible for life and long-term disability insurance.

11—64.16(8A) Sick leave insurance program. The director is authorized to establish a sick leave insurance program (program) for employees not covered by a collective bargaining agreement. The program shall allow eligible employees to convert a portion of their sick leave balance at retirement into a sick leave bank with which the state will pay the state's share of retiree health insurance. Employees of the department of natural resources or department of public safety who are classified as peace officers and are not covered by a collective bargaining agreement shall receive benefits at retirement consistent with the provisions of the negotiated collective bargaining agreement with the State Police Officers Council. The benefits for sick leave banks earned by all department of public safety peace officer employees shall be administered by the department of public safety.

64.16(1) To be eligible to participate in the program, the employee must be employed on or after July 1, 2006, and must retire under a retirement system in the state maintained in whole or in part by public contributions or payment prior to reaching Medicare eligibility.

a. Participation in the program ceases when any one of the following occurs:

- (1) The employee's sick leave balance is exhausted;
- (2) The employee reaches Medicare eligibility;
- (3) The employee terminates participation in the state's group insurance program;
- (4) The employee returns to permanent employment with the state;
- (5) The employee fails to pay any required amount; or
- (6) The employee dies.

b. A deceased employee's sick leave bank is not transferable to another person, including a spouse.

64.16(2) Upon a participating employee's termination of employment, the employee's sick leave hours are multiplied by the employee's regular hourly wage. The employee receives up to \$2,000 of this amount on the employee's final paycheck. The remainder is multiplied by a conversion factor, and that amount is placed into the employee's sick leave bank. The conversion factors are as follows: If an employee has up to 750 hours, the rate is 60 percent; if an employee has over 750 hours and up to 1,500 hours, the rate is 80 percent; and if the employee has more than 1,500 hours, the rate is 100 percent. The employee's sick leave balance before payment of up to \$2,000 is used to determine the number of hours an employee has for conversion purposes. The amounts placed into the employee's sick leave bank have no cash value, other than for purposes of paying the state's share of retiree health insurance premiums under this program. The value of sick leave hours for peace officer employees of the department of natural resources and the department of public safety shall be calculated in the same manner as for those employees covered by the collective bargaining agreement with the State Police Officers Council.

64.16(3) An employee who retires and participates in the program and becomes reemployed by the state in a permanent position is no longer eligible for the program and shall not be eligible for the program upon successive termination of employment.

64.16(4) To participate in the program, an employee must complete a sick leave insurance program enrollment form upon retirement. Upon commencement of participation in the program, the employee may choose to continue the employee's current health insurance plan selection or may choose any other state group health plan whose total cost is the same or lower than the total cost of the current plan selection. Except for employees eligible for benefits negotiated consistent with the collective bargaining agreement negotiated with the State Police Officers Council, employees may not apply the sick leave balance to a private insurance plan.

These rules are intended to implement Iowa Code sections 8A.402, 8A.433 to 8A.438, and 8A.454 and Iowa Code chapter 509A.

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CHAPTER 50
HEALTH CARE FACILITIES ADMINISTRATION

481—50.1(10A) Inspections. The health facilities division inspects health care facilities, hospitals, and providers and suppliers of medical services in Iowa. Standards to obtain a license are explained in this chapter.

481—50.2(10A) Definitions.

“Administrator” means the person coordinating the administration of the division.

“Department” means the department of inspections and appeals.

“Director” means the director of inspections and appeals.

“Division” means the health facilities division.

481—50.3(135B,135C) Licensing. All hospitals and health care facilities shall be licensed by the department. Applications are available from the Health Facilities Division, Lucas State Office Building, Des Moines, Iowa 50319-0083. Completed applications are returned to the division with the fee.

50.3(1) Initial fees for hospitals are:

- a. Fifty beds or less, \$15;
- b. More than 50 and not more than 100 beds, \$25;
- c. Any greater number of beds, \$50.

A fee of \$10 is charged to renew a hospital license each year.

50.3(2) Initial and renewal fees for health care facilities are:

- a. Ten beds or less, \$20;
- b. More than 10 and not more than 25 beds, \$40;
- c. More than 26 and not more than 75 beds, \$60;
- d. More than 76 and not more than 150 beds, \$80;
- e. Any greater number of beds, \$100.

50.3(3) Standards used to determine whether a license is granted or retained are found in the rules of the department of inspections and appeals in the Iowa Administrative Code as follows:

- a. Hospitals, 481—Chapter 51;
- b. Hospices, 481—Chapter 53;
- c. Residential care facilities, 481—Chapters 57 and 60;
- d. Nursing facilities, 481—Chapters 58 and 61;
- e. Residential care facilities for persons with mental illness, 481—Chapters 60 and 62;
- f. Residential care facilities for the intellectually disabled, 481—Chapters 60 and 63;
- g. Intermediate care facilities for the intellectually disabled, 481—Chapter 64; and
- h. Intermediate care facilities for persons with mental illness, 481—Chapter 65.

50.3(4) Posting of license. The license shall be posted in each facility so the public can see it easily.

[ARC 0766C, IAB 5/29/13, effective 7/3/13]

481—50.4(135C) Fines and citations. A fine or citation will be issued and may be contested according to the rules in 481—Chapter 56.

481—50.5(135C) Denial, suspension or revocation.

50.5(1) A denial, suspension or revocation shall be effective 30 days after certified mailing or personal service of the notice.

50.5(2) A hearing may be requested and the request must be made in writing to the department within 30 days of the mailing or service.

481—50.6(10A) Formal hearing. All decisions of the division may be contested. Appeals and hearings are controlled by 481—Chapter 10, “Contested Case Hearings.”

50.6(1) The proposed decision of the hearing officer becomes final ten days after it is mailed.

50.6(2) Any request for administrative review of a proposed decision must:

1. Be made in writing,
2. Be mailed by certified mail to the director, within ten days after the proposed decision was mailed to the aggrieved party,
3. State the reason(s) for the request.

A copy shall also be sent to the hearing officer at the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

50.6(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing by certified mail.

50.6(4) The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

481—50.7(10A,135C) Additional notification. The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available (I,II,III):

50.7(1) Of any accident causing major injury.

a. "Major injury" shall be defined as any injury which:

- (1) Results in death; or
- (2) Requires admission to a higher level of care for treatment, other than for observation; or
- (3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the resident, and the resident's prognosis.

b. The following are not reportable accidents:

- (1) An ambulatory resident, as defined in rules 481—57.1(135C), 481—58.1(135C), and 481—63.1(135C), who falls when neither the facility nor its employees have culpability related to the fall, even if the resident sustains a major injury; or
- (2) Spontaneous fractures; or
- (3) Hairline fractures.

50.7(2) When damage to the facility is caused by a natural or other disaster.

50.7(3) When there is an act that causes major injury to a resident or when a facility has knowledge of a pattern of acts committed by the same resident on another resident that results in any physical injury. For the purposes of this subrule, "pattern" means two or more times within a 30-day period.

50.7(4) When a resident elopes from a facility. For the purposes of this subrule, "elopes" means when a resident who has impaired decision-making ability leaves the facility without the knowledge or authorization of staff.

50.7(5) When a resident attempts suicide, regardless of injury.

50.7(6) When a fire occurs in a facility and the fire requires the notification of emergency services, require full or partial evacuation of the facility, or causes physical injury to a resident.

50.7(7) When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapter 235B and 2008 Iowa Acts, House File 2591, which require reporting of dependent adult abuse.

481—50.8(22,135B,135C) Records. The division collects and stores a variety of records in the course of licensing and inspecting health care facilities. Some information stored may be personally identifiable. None is retrievable by personal identifier with the exception of a business which uses an individual's name in the title. All records stored by the health facilities division are kept in files under the name of a facility. Computer files are retrieved by facility name also.

50.8(1) The department maintains information about long-term care facilities in files which are organized by facility name, city, and county. No information is retrievable by personal identifier. Each long-term care facility record contains both open and confidential information.

a. Open information includes:

- (1) License application and status,
- (2) Variance requests and responses,
- (3) Final findings of state and Medicaid survey investigations,
- (4) Records of complaints,
- (5) Reports from the fire marshal,
- (6) Plans of correction submitted by the facility,
- (7) Medicaid status,
- (8) Official notices of license and Medicaid sanctions.

b. Confidential information includes:

- (1) Survey or investigation information which does not comprise a final finding. Survey information which does not comprise a final finding may be made public in a proceeding concerning the citation of a facility, denial, suspension or revocation of a license, Iowa Code section 135C.19(1),
- (2) Names of all complainants, Iowa Code sections 135C.19(1) and 135C.37,
- (3) Names of patients in all facilities, identifying medical information and the address of anyone other than an owner, Section 1106 of the Social Security Act as amended, 42 CFR Part 401, Subpart B (October 1, 1986) and Iowa Code sections 22.9 and 135C.19(1).

50.8(2) The department maintains records about hospitals. The records are organized by facility name, city, and county. The records are not retrievable by personal identifier. The Joint Commission on the Accreditation of Healthcare Organizations is referred to as JCAHO, and the American Osteopathic Association is referred to as AOA in this rule. These records may contain both open and confidential information.

a. Open information includes:

- (1) License status,
- (2) Medicare certification status,
- (3) Medicare survey reports,
- (4) Plans of correction submitted by a hospital,
- (5) Official notices of involuntary provider termination or license sanctions,
- (6) For hospitals not certified by JCAHO or AOA, reports of the fire marshal,
- (7) Final survey findings of the JCAHO and the AOA with respect to compliance by a hospital with the requirements for licensure or accreditation.

b. Confidential information includes:

- (1) Names of patients and identifying medical information,
- (2) Identity of any complainant, and
- (3) The address of anyone other than the owner, Iowa Code section 135B.12 and Section 1106 of the Social Security Act, 42 CFR Part 401, Subpart B (October 1, 1986) and Iowa Code section 22.9.
- (4) Rescinded IAB 2/19/92, effective 3/25/92.
- (5) No information may be disclosed in a manner which will identify individuals or hospitals except in a proceeding concerning the question of license or the denial, suspension or revocation of a license, Iowa Code section 135B.12.

50.8(3) The department maintains files for all other Medicare-certified facilities. These files are organized by facility or agency name, city, and county. None is retrievable by personal identifier except when a business uses an individual's name in its title. These files contain both open and confidential information.

a. Open information includes:

- (1) Certification status,
- (2) Survey reports,
- (3) Plans of correction,
- (4) Official notices of involuntary provider termination,

(5) Proficiency test results for non-JCAHO or AOA accredited hospitals, Medicare laboratories and laboratories licensed under the clinical Laboratory Improvement Act.

b. Confidential information includes:

- (1) Name of any patient,
- (2) Medical information about any identifiable patient,
- (3) The identity of any complainant, and
- (4) The address of anyone other than an owner of the facility, Section 1106 of the Social Security Act, 43 CFR, Part 401, Subpart B (October 1, 1986), and Iowa Code section 22.9.

50.8(4) Rescinded IAB 3/31/04, effective 5/5/04.

50.8(5) Following a written request and payment of a fee in the amount determined by the department, one or more of the following lists may be obtained by the public.

a. Corporations which own more than one facility and the list of facilities owned by each corporation.

b. All the facilities in the state with the owner of the real estate property identified.

c. All corporations that lease facilities and the facilities they lease.

d. All corporations which manage facilities for other owners and the facilities they manage.

Requests are sent to Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

481—50.9(135C) Criminal, dependent adult abuse, and child abuse record checks.

50.9(1) *Definitions.* The following definitions apply for the purposes of this rule.

“Background check” or *“record check”* means criminal history, child abuse and dependent adult abuse record checks.

“Certified nurse aide training program” means a program approved in accordance with the rules for such programs adopted by the department of human services for the training of persons seeking to be a certified nurse aide for employment in a facility as defined by this rule or in a hospital as defined in Iowa Code section 135B.1.

“Direct services” means services provided through person-to-person contact. “Direct services” excludes services provided by individuals such as building contractors, repair workers, or others who are in a facility for a very limited purpose, are not in the facility on a regular basis, and who do not provide any treatment or services for residents, patients, tenants, or participants of the provider.

“Employed in a facility” or *“employment within a facility”* means all of the following if the provider is regulated by the state or receives any federal or state funding:

1. An employee of a health care facility licensed under Iowa Code chapter 135C if the employee provides direct or indirect services to residents;
2. An employee of a home health agency if the employee provides direct services to consumers;
3. An employee of a hospice if the employee provides direct services to consumers.

“Employee” means any individual who is paid either by the facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors).

“Evaluation” means review by the department of human services to determine whether a founded child abuse, dependent adult abuse or criminal conviction warrants prohibition of the person’s employment in a facility; or whether a founded child abuse, dependent adult abuse or criminal conviction warrants prohibition of a student’s involvement in a clinical education component of the certified nurse aide training program involving children or dependent adults.

“Facility,” for purposes of this rule, means all of the following if the provider is regulated by the state or receives any federal or state funding:

1. A health care facility licensed under Iowa Code chapter 135C;
2. A home health agency;
3. A hospice.

“Indirect services” means services provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance.

“*Student*” means a person applying for, enrolled in, or returning to a certified nurse aide training program.

50.9(2) *Explanation of “crime.”* For purposes of this rule, the term “crime” does not include offenses under Iowa Code chapter 321 classified as simple misdemeanor or equivalent simple misdemeanor offenses from another jurisdiction.

50.9(3) *Requirements for employer prior to employing an individual.* Prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state.

a. Informing the prospective employee. A facility shall ask each person seeking employment by the facility, “Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime other than a simple misdemeanor offense relating to motor vehicles and laws of the road under Iowa Code chapter 321 or equivalent provisions, in this state or any other state?” In addition, the person shall be informed that a background check will be conducted. The person shall indicate, by signature, that the person has been informed that the background check will be conducted. (I, II, III)

b. Conducting a background check. The facility may access the single contact repository (SING) to perform the required background check. If the SING is used, the facility shall submit the person’s maiden name, if applicable, with the background check request. If the SING is not used, the facility must obtain a criminal history check from the department of public safety and a check of the child and dependent adult abuse registries from the department of human services. (I, II, III)

c. If a person being considered for employment has been convicted of a crime. If a person being considered for employment in a facility has been convicted of a crime under a law of any state, the department of public safety shall notify the facility that upon the request of the facility the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the facility. (I, II, III)

d. If a person being considered for employment has a record of founded child or dependent adult abuse. If a department of human services child or dependent adult abuse record check shows that a person being considered for employment in a facility has a record of founded child or dependent adult abuse, the department of human services shall notify the facility that upon the request of the facility the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of the person’s employment in the facility. (I, II, III)

e. Employment pending evaluation. The facility may employ a person for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the person’s employment.

(1) The person is being considered for employment other than employment involving the operation of a motor vehicle;

(2) The person does not have a record of founded child or dependent adult abuse;

(3) The person has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and

(4) The facility has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the person’s employment. (I, II, III)

50.9(4) *Validity of background check results.* The results of a background check conducted pursuant to this rule shall be valid for a period of 30 calendar days from the date the results of the background check are received by the facility. (I, II, III)

50.9(5) *Employment prohibition.* A person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility unless an evaluation has been performed by the department of human services. (I, II, III)

50.9(6) *Transfer of an employee to another facility owned or operated by the same person.* If an employee transfers from one facility to another facility owned or operated by the same person, without a lapse in employment, the facility is not required to request additional criminal and child and dependent adult abuse record checks of that employee. (I, II, III)

50.9(7) *Transfer of ownership of a facility.* If the ownership of a facility is transferred, at the time of transfer the background check required by this rule shall be performed for each employee for whom there is no documentation that such background check has been performed. The facility may continue to employ such employee pending the performance of the background check and any related evaluation. (I, II, III)

50.9(8) *Change of employment—person with criminal or abuse record—exception to record check evaluation requirements.* A person with a criminal or abuse record who is or was employed by a facility and is hired by another facility shall be subject to the background check.

a. A reevaluation of the latest record check is not required, and the person may commence employment with the other facility if the following requirements are met:

(1) The department of human services previously performed an evaluation concerning the person's criminal or abuse record and concluded the record did not warrant prohibition of the person's employment;

(2) The latest background check does not indicate a crime was committed or founded abuse record was entered subsequent to the previous evaluation;

(3) The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed;

(4) Any restrictions placed on the person's employment in the previous evaluation by the department of human services and still applicable shall remain applicable in the person's subsequent employment; and

(5) The person subject to the background check has maintained a copy of the previous evaluation and provided it to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed. (I, II, III)

b. For purposes of this subrule, a position is "substantially the same or has the same job responsibilities" if the position requires the same certification, licensure, or advanced training. For example, a licensed nurse has substantially the same or the same job responsibilities as a director of nursing; a certified nurse aide does not have substantially the same or the same job responsibilities as a licensed nurse.

c. The subsequent employer must maintain the previous evaluation in the employee's personnel file for verification of the exception to the requirement for a record check evaluation. (I, II, III)

d. The subsequent employer may request a reevaluation of the background check and may employ the person while the reevaluation is being performed, even though an exemption under paragraph 50.9(8) "*a*" may be authorized.

50.9(9) *Employee notification of criminal conviction or founded abuse after employment.* If a person employed by a facility employer that is subject to this rule is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

a. The employer shall act to verify the information within seven calendar days of notification. "Verify," for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the facility shall follow the requirements of paragraphs 50.9(3) "*c*" and "*d*." (I, II, III)

c. The employer may continue to employ the person pending the performance of an evaluation by the department of human services.

d. A person who is required by this subrule to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

e. The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under this subrule.

50.9(10) Facility receipt of credible information that an employee has been convicted of a crime or has a record of founded abuse. If the facility receives credible information, as determined by the facility, from someone other than the employee, that the employee has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment, and the employee has not informed the employer of the information within the time required by subrule 50.9(9), the facility shall take the following actions:

a. The facility shall act to verify credible information within seven calendar days of receipt. "Verify," for purposes of this subrule, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents.

b. If the information is verified, the facility shall follow the requirements of paragraphs 50.9(3) "c" and "d." (I, II, III)

50.9(11) Proof of background checks for temporary employment agencies and contractors. Proof of background checks may be kept in the files maintained by temporary employment agencies and contractors. Facilities may require temporary employment agencies and contractors to provide a copy of the result of the background checks. Copies of such results shall be made available to the department upon request. (I, II, III)

50.9(12) Certified nurse aide training program students. Prior to a student's beginning or returning to a certified nurse aide training program, the program shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks, in this state, of the student.

a. *Prohibition of involvement in clinical education.* If a student has a criminal record or a record of founded child or dependent adult abuse, the student shall not be involved in a clinical education component of the certified nurse aide training program involving children or dependent adults unless an evaluation has been performed by the department of human services. The evaluation shall be performed upon request of the certified nurse aide training program.

b. *Involvement in clinical education component pending evaluation.* The training program may allow the student's participation in the clinical education component for not more than 60 calendar days pending the completion of the evaluation by the department of human services if all of the following apply. The 60-day period begins on the first day of the student's participation in the clinical education component.

(1) The student's clinical education component of the training program involves children or dependent adults but does not involve the operation of a motor vehicle;

(2) The student does not have a record of founded child or dependent adult abuse;

(3) The student has been convicted of a crime that is a simple misdemeanor offense under Iowa Code section 123.47 or a first offense of operating a motor vehicle while intoxicated under Iowa Code section 321J.2(1); and

(4) The training program has requested that the department of human services perform an evaluation to determine whether the crime warrants prohibition of the student's involvement in the clinical education component.

c. *Student notification of criminal conviction or founded abuse after performance of record checks and evaluation.* If a student is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the record checks and any evaluation have been performed, the

student shall inform the certified nurse aide training program of such information within 48 hours of the criminal conviction or entry of the record of founded child or dependent adult abuse.

(1) The program shall act to verify the information within seven calendar days of notification. “Verify,” for purposes of this paragraph, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents. If the information is verified, the program shall follow the requirements of paragraph 50.9(12) “a” to determine whether or not the student’s involvement in a clinical education component may continue.

(2) The program may allow the student involvement to continue pending the performance of an evaluation by the department of human services.

(3) A student who is required to inform the program of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor under Iowa Code section 135C.33.

(4) The program may notify the county attorney for the county where the program is located of any violation or failure by a student to notify the program of a criminal conviction or entry of an abuse record within the period required by this paragraph.

d. Program receipt of credible information that a student has been convicted of a crime or has a record of founded abuse. If a program receives credible information, as determined by the program, that a student has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after the record checks and any evaluation have been performed, from a person other than the student, and the student has not informed the program of such information within 48 hours, the program shall act to verify the credible information within seven calendar days of receipt of the credible information. “Verify,” for purposes of this paragraph, means to access the single contact repository (SING) to perform a background check, to request a criminal background check from the department of public safety, to request an abuse record check from the department of human services, to conduct an online search through the Iowa Courts Online Web site, or to contact the county clerk of court office and obtain a copy of relevant court documents. If the information is verified, the requirements of paragraph 50.9(12) “a” shall be applied to determine whether or not the student’s involvement in a clinical education component may continue.

e. Completion of a certified nurse aide training program conducted by the health care facility. If a certified nurse aide training program is conducted by the facility and a student of that program accepts and begins employment with the facility within 30 days of completing the program, the background check of the student performed prior to beginning the training program shall fulfill the criminal and abuse background check requirements. The facility shall maintain the proof required in subrule 50.9(11). (I, II, III)

This rule is intended to implement Iowa Code section 135C.14 and section 135C.33 as amended by 2013 Iowa Acts, Senate File 347.

[ARC 0903C, IAB 8/7/13, effective 9/11/13; ARC 1566C, IAB 8/6/14, effective 9/10/14]

481—50.10(135C) Inspections, exit interviews, plans of correction, and revisits.

50.10(1) Frequency of inspection. The department shall inspect a licensed health care facility at least once within a 30-month period. Facilities participating in the Medicare or Medicaid programs may be inspected more frequently as a part of a joint state and federal inspection.

50.10(2) Accessibility of records, the facility, and persons. An inspector of the department may enter any licensed health care facility without a warrant and may examine all records pertaining to the care provided to residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. The inspector may duplicate records and take photographs as part of the inspection.

50.10(3) Exit interviews. The health care facility shall be provided an exit interview at the conclusion of an inspection, and the facility representative shall be informed of all issues and areas of concern related to the deficiencies.

a. Methods of conducting exit interview. The department may conduct the exit interview either in person or by telephone.

b. Second exit interviews. The department shall conduct a second exit interview if any additional areas of concern are identified.

50.10(4) Submission of additional or rebuttal information. The facility shall be provided two working days from the date of the exit interview to submit additional or rebuttal information to the department.

a. Receipt of additional information. Additional or rebuttal information must be received by the department within two working days in order to be considered.

b. Methods to submit additional information. The additional or rebuttal information may be submitted via E-mail, facsimile, or overnight courier to the department.

c. Inform of the opportunity to submit additional or rebuttal information. During the inspection, the facility shall be informed of the opportunity to submit additional or rebuttal information and of the contact information for the department.

50.10(5) Standards for determining whether a deficiency exists. The department shall use a preponderance of the evidence standard when determining whether a regulatory deficiency exists. For purposes of this rule and rule 481—50.11(135C), “preponderance of the evidence standard” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations or deficiency is more likely true than not true. This standard does not require that the inspector personally witnessed the alleged violation.

50.10(6) Statement of deficiencies. When one or more deficiencies are found, a statement of deficiencies detailing each deficiency shall be sent by the department to the health care facility within ten working days of the exit interview.

50.10(7) Plan of correction. Within ten calendar days following receipt of the statement of deficiencies, the health care facility shall submit a plan of correction to the department.

a. Contents of plan. The plan of correction shall contain the following information:

- (1) How the facility will correct the deficient practice;
- (2) How the facility will act to protect residents;
- (3) The measures the facility will take or the systems it will alter to ensure that the problem does not recur;
- (4) How the facility plans to monitor its performance to make sure that solutions are sustained; and
- (5) Date(s) when corrective action will be completed.

b. Review of plan. The department shall review the plan of correction within ten working days of receipt. The department may request additional information or revisions to the plan, which shall be provided as requested.

50.10(8) Revisits. If a facility licensed under this chapter is subject to or will be subject to denial of payment including payment for Medicare or medical assistance (Medicaid) under Iowa Code chapter 249A, or denial of payment for all new admissions pursuant to 42 CFR Section 488.417, and submits a plan of correction relating to the deficiencies or a response to a citation issued under 481—Chapter 56 and the department elects to conduct an on-site revisit inspection, the department shall commence the revisit inspection within the shortest time feasible of the date that the plan of correction is received or the date specified within the plan of correction alleging compliance, whichever is later.

50.10(9) Appeals of statement of deficiencies. The facility may appeal the statement of deficiencies by filing an appeal request with the department within 20 working days after receipt of the statement of deficiencies. The procedures defined in rule 481—50.6(10A) shall be followed for the appeal.

[ARC 8433B, IAB 12/30/09, effective 2/3/10; ARC 1566C, IAB 8/6/14, effective 9/10/14]

481—50.11(135C) Complaint and self-reported incident investigation procedure.

50.11(1) Complaint. The process for filing a complaint is as follows:

a. Any person with concerns regarding a facility may file a complaint with the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

b. When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant to the appropriate investigatory entity.

c. The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the facility or resident; and the reason for the complaint.

d. The complainant's name shall be confidential information and shall not be released by the department.

e. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the facility.

f. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without a reasonable basis, the department may dismiss the complaint.

50.11(2) Self-reported incident. When the facility is required pursuant to rule 481—50.7(10A,135C) or other requirements to report an incident, the facility shall make the report to the department via:

a. The Web-based reporting tool accessible from the following Internet site, https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Login" tab and then access "Add self report";

b. Mail by sending the self-report to the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

c. The complaint/incident hotline, 1-877-686-0027; or

d. Facsimile sent to (515)281-7106.

50.11(3) Time frames for investigation of complaint or self-reported incident. The following guidelines shall be used for determining the time frame in which an on-site inspection of the facility shall be initiated:

a. *Immediate jeopardy situation.* Within 2 working days for a complaint or self-reported incident determined by the department to be an alleged immediate jeopardy situation. For purposes of this rule, "immediate jeopardy situation" means a situation in which the facility's alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, has caused or is likely to cause, serious injury, harm, impairment, or death to a resident.

b. *High-level nonimmediate jeopardy situation.* Within 10 days for nursing facilities and within 20 working days for intermediate care facilities and residential care facilities for a complaint or self-reported incident determined by the department to be an alleged high-level nonimmediate jeopardy situation. For purposes of this rule, "high-level nonimmediate jeopardy situation" means the alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, may have caused harm that negatively impacts the resident's mental, physical, or psychosocial status and is of such consequence to the resident's well-being that a rapid response is warranted.

c. *Other nonimmediate jeopardy situation.* Within 45 calendar days for a complaint or self-reported incident determined by the department to be an alleged nonimmediate jeopardy situation, other than a high-level nonimmediate jeopardy situation. For purposes of this rule, "other nonimmediate jeopardy situation" means a situation that is not a high-level nonimmediate jeopardy situation where the alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, may cause harm of limited consequence and does not significantly impair the individual's mental, physical, or psychosocial status or function.

d. *No inspection of facility-reported incidents.* The department may determine not to institute an inspection of a self-reported incident using criteria including, but not limited to, the following:

(1) There is no evident deficiency on the part of the facility, and the facility has taken appropriate measures to address the situation; or

- (2) There is a potential deficiency but:
 1. The facility has taken appropriate measures to address the situation;
 2. The facility does not have a recent history of identified deficiency similar to or related to the incident being reported;
 3. A complaint has not been filed regarding the incident being reported; and
 4. The resulting injury does not cause a significant negative impact to the resident's quality of life.

50.11(4) *Standard for determining whether a complaint or self-reported incident is substantiated.* The department shall apply a preponderance of the evidence standard in determining whether a complaint or self-reported incident is substantiated.

50.11(5) *Notification of program and complainant.* The department shall notify the facility and, if known, the complainant of the findings of the complaint investigation. The department shall also notify the complainant, if known, if the department does not investigate a complaint, and the reasons for not investigating the complaint shall be included in the notification.

50.11(6) *Process for complaint and self-reported incident.* The department and facility shall follow the process outlined in rule 481—50.10(135C), as applicable, when conducting or responding to a complaint or self-reported incident investigation.

[ARC 8433B, IAB 12/30/09, effective 2/3/10]

481—50.12(135C) Requirements for service. At each inspection, the facility shall provide the most current contact information for the purpose of service of departmental notices. A statement of deficiencies or citation shall be served upon a facility using one of the following methods.

50.12(1) *Electronic mail.* If a facility has electronic mail, electronic mail shall be used for service of statements of deficiencies and citations. If electronic mail is used, the following shall be complied with:

- a. The department shall send the electronic message return receipt requested. The response from the return receipt shall officially document receipt of the service and the date of receipt.
- b. A facility shall allow the electronic return receipt to be returned to the department and shall not delay the sending of the return receipt.
- c. If the department has not received the return receipt within three business days of sending the service via electronic mail, the department shall contact the facility to verify the receipt of the service.

50.12(2) *Certified mail.* If a facility does not have access to electronic mail, the service shall be sent via certified mail, return receipt requested.

50.12(3) *Personal service.* The department may choose to personally serve the notice upon the health care facility by delivering a copy of the statement of deficiencies or citation to the health care facility and presenting the copy to the facility.

[ARC 8433B, IAB 12/30/09, effective 2/3/10]

481—50.13(135C) Inspectors' conflicts of interest.

50.13(1) *Conflicts.* Any of the following circumstances disqualifies an inspector from inspecting a particular health care facility licensed under Iowa Code chapter 135C:

- a. The inspector currently works or, within the past two years, has worked as an employee or employment agency staff at the health care facility, or as an officer, consultant, or agent for the health care facility to be inspected.
- b. The inspector has any financial interest or any ownership interest in the facility. For purposes of this paragraph, indirect ownership, such as through a broad-based mutual fund, does not constitute a financial or ownership interest.
- c. The inspector has an immediate family member who has a relationship with the facility as described in subrule 50.13(1), paragraphs "a" and "b."

50.13(2) *Immediate family member.* For purposes of this rule, "immediate family member" means the same as set forth in 42 CFR 488.301, and includes a husband or wife; natural or adoptive

parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.

[ARC 8433B, IAB 12/30/09, effective 2/3/10]

These rules are intended to implement Iowa Code sections 22.11 and 135B.3 to 135B.7 and Iowa Code chapters 10A and 135C.

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CHAPTER 22 CONTROLLING POLLUTION

[Prior to 7/1/83, DEQ Ch 3]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—22.1(455B) Permits required for new or existing stationary sources.

22.1(1) *Permit required.* Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to rule 567—22.8(455B), or permits required pursuant to rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), and 567—33.3(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

a. Existing sources. Sources built prior to September 23, 1970, are not subject to this subrule, unless they have been modified, reconstructed, or altered on or after September 23, 1970.

b. New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as amended through April 22, 2004, unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in subrule 22.1(3);

2. The applicant has notified the department of the applicant’s intentions in writing five working days prior to initiating construction; and

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), or paragraph “b” of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) The applicant must cease construction if the department’s evaluation demonstrates that the construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through August 12, 1996.

(3) The applicant will be required to make any modification to the source that may be imposed in the issued construction permit.

(4) The applicant must notify the department of the date that construction or reconstruction actually started. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3) “b.”

d. Permit requirements for country grain elevators, country grain terminal elevators, grain terminal elevators, and feed mill equipment. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as “country grain elevator,” “country grain terminal elevator,” “grain terminal elevator,” and “feed mill equipment” are defined in subrule 22.10(1), may elect to comply with the requirements specified in rule 567—22.10(455B) for equipment at these facilities.

22.1(2) Exemptions. The requirement to obtain a permit in subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 567—22.4(455B) and 567—Chapter 33, prevention of significant deterioration requirements, or rule 567—22.5(455B) or 567—31.3(455B), requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)“a” (for equipment > 1 million Btu per hour input), 22.1(2)“b,” 22.1(2)“e,” 22.1(2)“r” or 22.1(2)“s.” The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to paragraphs 22.1(2)“g” and “i.” A facility claiming to be exempt under the provisions of paragraph 22.1(2)“g” or “i” shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
 - A detailed description of each change being made;
 - The name and location of the facility;
 - The height of the emission point or stack and the height of the highest building within 50 feet;
 - The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 567—22.4(455B), 567—22.5(455B), and 567—31.3(455B) and 567—Chapter 33 do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)“i,” when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through October 20, 2010, and adopted in rules 567—22.4(455B) and 567—33.3(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for emission reductions, a permit must be obtained for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.

h. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other regulated air contaminant (as defined in rule 567—22.100(455B)).

i. Initiation of construction, installation, reconstruction, or alteration (modification) to equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, which will not result in a net emissions increase (as defined in paragraph 22.5(1) “f”) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Hazardous air pollutants (as defined in rule 567—22.100(455B)) are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

Equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption.

j. Residential heaters, cookstoves, or fireplaces, which burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

k. Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only hand-held aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a

completed registration, on forms provided by the department, certifying that the engine is in compliance with the following federal regulations:

- (1) New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or
- (2) New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and
- (3) National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements.

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to: lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than one million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. "Maximum true vapor pressure" means the equilibrium partial pressure of the material considering:

- For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or
- For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in rule 567—22.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) "Small unit" means any emission unit and associated control (if applicable) that emits less than the following:

1. 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM₁₀;
8. 0.52 tons per year of PM_{2.5} (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or
9. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, "emission unit" means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified "small units."

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or

567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an “exemption justification document.” The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of “small unit” for the particular emission unit or group of similar emission units obtaining the exemption. Controls which may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections, and shall be provided to the director or the director’s representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, applicant shall maintain a copy of any report of manufacturer’s testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2) “w”(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a “small unit,” then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from

the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a “substantial small unit.” The owner or operator shall notify the department in writing at least 10 days prior to commencing construction of any new or modified “substantial small unit” as defined in 22.1(2) “w”(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the “substantial small unit” as defined in 22.1(2) “w”(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, “substantial small unit” means a small unit which emits more than the following amounts, as documented in the exemption justification document:

1. 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);

2. 3.75 tons per year of sulfur dioxide;

3. 3.75 tons per year of nitrogen oxides;

4. 3.75 tons per year of volatile organic compounds;

5. 3.75 tons per year of carbon monoxide;

6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 1.875 tons per year of PM₁₀;

8. 0.4 tons per year of PM_{2.5} (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or

9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a “substantial small unit” only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a “cumulative notice threshold,” as defined in 22.1(2) “w”(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within 5 working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) “Cumulative notice threshold” means the total combined emissions from all substantial small units using the small unit exemption which emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;

2. 40 tons per year of sulfur dioxide;

3. 40 tons per year of nitrogen oxides;

4. 40 tons per year of volatile organic compounds;

5. 100 tons per year of carbon monoxide;

6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 15 tons per year of PM₁₀;

8. 10 tons per year of PM_{2.5} (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or

9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(9) Air compressors and vacuum, pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases which are hazardous air pollutants as defined in rule 567—22.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, record-keeping or reporting requirements under 567—subrule 23.1(2), 567—subrule 23.1(3), or 567—subrule 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable hand-held aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of $1380x - 19,200$ or 200,000 for GMAW, or

Y = the greater of $187x - 2,600$ or 28,000 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 1,600 pounds per year for GMAW and 12,500 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years. For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of $84x - 1,200$ or 1,600 for GMAW, or

Y = the greater of $11x - 160$ or 12,500 for SMAW or FCAW

Where “x” is the minimum distance to the property line in feet and “Y” is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

jj. Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);

5 tons per year of sulfur dioxide;

5 tons per year of nitrogen oxides;

5 tons per year of volatile organic compounds;

5 tons per year of carbon monoxide;

5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);

2.5 tons per year of PM_{10} ;

0.52 tons per year of $PM_{2.5}$ (does not apply to research and development activities that commenced on or before October 23, 2013); and

5 tons per year of hazardous pollutants (as defined in rule 567—22.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in subparagraph (1) above. These records shall:

1. Include a list of equipment that is included under the exemption;
2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;
3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and
4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, "research and development activities" shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel; and
2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; and
3. That do not manufacture more than de minimis amounts of commercial products; and
4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner.

ll. A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

nn. Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in rule 567—22.100(455B).

oo. A non-road diesel fueled engine, as defined in 40 CFR 1068.30 and as amended through October 8, 2008, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer's nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or

2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. Two copies of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. The owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.

a. New equipment design in concept review. If requested in writing, the director will review the design concepts of proposed new equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the proposed equipment. If the review is requested, the requester shall supply the following information:

- (1) Preliminary plans and specifications of proposed equipment and related control equipment.
- (2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.
- (3) The estimated emission rates of any air contaminants which are to be considered.
- (4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.
- (5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the form “Air Construction Permit Application.” Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while doing work for that corporation. The application for a permit to construct shall include the following information:

- (1) A description of the equipment or control equipment covered by the application;
- (2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;
- (3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;
- (4) The physical and chemical characteristics of the air contaminants;
- (5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;
- (6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;
- (7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B); and

(8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)“b,” then the owner or operator shall submit an application for a case-by-case MACT determination, as required in subparagraph 23.1(4)“b”(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. The hazardous air pollutants (HAP) emitted by the constructed or reconstructed major source, and the estimated emission rate for each HAP, to the extent this information is needed by the permitting authority to determine MACT;

2. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

3. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

4. The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity to the extent this information is needed by the permitting authority to determine MACT;

5. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 40 CFR Part 63.43(d) as amended through December 27, 1996;

6. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer’s name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

7. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology;

8. An identification of any listed source category or categories in which the major source is included.

(9) A signed statement that ensures the applicant’s legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

- (1) The source of the water being discharged to the lagoon;

- (2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

- (3) In the case of an animal feeding operation, the information required in rule 567—65.15(455B);

- (4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

- (5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

- (6) A description of available water supplies to prove that adequate water is available for dilution;

- (7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

- (8) Any additional information needed by the department to determine compliance with these rules.

22.1(4) Conditional permits. The owner or operator of any new or modified major stationary source may elect to apply for a conditional permit in lieu of a construction permit. Electric power generating facilities with a total capacity of 100 megawatts or more are required to apply for a conditional permit.

a. Applicability determination. If requested in writing, the director will make a preliminary determination of nonattainment applicability pursuant to rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B) based upon the information supplied by the requester.

b. Conditional permit applications. Each application for a conditional permit shall be submitted to the department in writing and shall consist of the following items:

(1) The results of an air quality impact analysis which characterizes preconstruction air quality and the air quality impacts of facility construction and operation. A quality assurance plan for the preconstruction air monitoring where required in accordance with 40 Code of Federal Regulations Part 58 as amended through July 18, 1997, shall also be submitted.

(2) A description of equipment and pollution control equipment design parameters.

(3) Preliminary plans and specifications showing major equipment items and location.

(4) The fuel specifications of any anticipated energy source, and assurances that any proposed energy source will be utilized.

(5) Certification that the preliminary plans and specifications for the equipment and related control equipment have been prepared by or under the direct supervision of a professional engineer registered in the state of Iowa in conformance with Iowa Code chapter 542B.

(6) An estimate of when construction would begin and when construction would be completed.

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B).

This rule is intended to implement Iowa Code section 455B.133.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1013C, IAB 9/18/13, effective 10/23/13; ARC 1227C, IAB 12/11/13, effective 1/15/14]

567—22.2(455B) Processing permit applications.

22.2(1) Incomplete applications. The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) Public notice and participation. A notice of intent to issue a conditional or construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) Final notice. The department shall notify the applicant in writing of the issuance or denial of a construction or conditional permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

This rule is intended to implement Iowa Code section 455B.133.

567—22.3(455B) Issuing permits.

22.3(1) Stationary sources other than anaerobic lagoons. In no case shall a construction permit or conditional permit which results in an increase in emissions be issued to any facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan. If the facility is in compliance with a schedule for correcting the violation and

that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit or conditional permit. A construction or conditional permit shall be issued when the director concludes that the preceding requirement has been met and:

- a.* That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and
- b.* That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28, and
- c.* That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and
- d.* That the applicant has met all other applicable requirements.

22.3(2) *Anaerobic lagoons.* A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of rule 567—65.15(455B).

22.3(3) *Conditions of approval.* A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

- (1) The date or dates required by 22.3(3) “*b*” for which the notice is being submitted.
- (2) Facility name.
- (3) Facility address.
- (4) DNR facility number.
- (5) DNR air construction permit number.
- (6) The name or the number of the emission unit or units in the notification.
- (7) The emission point number or numbers in the notification.
- (8) The name and signature of a company official.
- (9) The date the notification was signed.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. A conditional permit shall require the submittal of final plans and specifications for the equipment or control equipment designed to meet the specified emission limits prior to installation of the equipment or control equipment.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least 7 days prior to the transfer of the portable equipment to the new location. Written notification shall be submitted to the department through one of the following methods: electronic mail (e-mail), mail delivery service (including U.S. Mail), hand delivery, facsimile (fax), or by electronic format specified by the department (at such time as an Internet-based submittal system or other, similar electronic submittal system becomes available). However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 14 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas

may be obtained from the department, upon request, or on the department's Internet Web site. The owner or operator will be notified by the department at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case, the owner or operator shall obtain a supplemental permit prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit or conditional permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirement under local, state or federal law.

22.3(4) Denial of a permit.

a. When an application for a construction or conditional permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) Modification of a permit. The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

22.3(6) Limits on hazardous air pollutants. The department may limit a source's hazardous air pollutant potential to emit, as defined at rule 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) Revocation of a permit. The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

22.3(8) Ownership change of permitted equipment. The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to rule 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, and shall include the following information:

- a. The date of ownership change;
- b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and
- c. The construction permit number of the equipment changing ownership.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 0330C, IAB 9/19/12, effective 10/24/12]

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). As applicable, the owner or operator of a stationary source shall comply with the rules for prevention of significant deterioration (PSD) as set forth in 567—Chapter 33.

567—22.5(455B) Special requirements for nonattainment areas. As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in rule 567—31.20(455B).

[ARC 1227C, IAB 12/11/13, effective 1/15/14]

567—22.6(455B) Nonattainment area designations. Rescinded ARC 1227C, IAB 12/11/13, effective 1/15/14.

567—22.7(455B) Alternative emission control program.

22.7(1) *Applicability.* The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended August 5, 2013) or located in an area with an approved state implementation plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

- a.* The applicant is presently in compliance with EPA approved SIP requirements, or
- b.* The applicant is subject to a consent order to meet an EPA approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

22.7(2) *Demonstration requirements.* The applicant for the alternative emission control program shall have the burden of demonstrating that:

- a.* The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Clean Air Act;
- b.* The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact; (In the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff.)
- c.* The pollutants being exchanged are comparable and within the same pollutant category;
- d.* Hazardous air pollutants designated in 40 CFR Part 61, as amended through July 20, 2004, will not be exchanged for nonhazardous air pollutants;
- e.* The alternative program will not result in any delay in compliance by any source.

Specific situations may require additional demonstration as specified at 44 FR 71780-71788, December 11, 1979, or as requested by the director.

22.7(3) *Approval process.*

- a.* The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.
- b.* After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.
- c.* If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the State Implementation Plan. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

[ARC 1227C, IAB 12/11/13, effective 1/15/14]

567—22.8(455B) Permit by rule.

22.8(1) *Permit by rule for spray booths.* Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

a. Definition. “Sprayed material” is material sprayed from spray equipment when used in the surface coating process in the spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents.

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1) “*e*” to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the

NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)“e” to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) which is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)“e.”

d. Facilities which facilitywide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by subrules 22.1(1) and 22.1(3) unless otherwise exempt.

e. Notification letter.

(1) Facilities which claim to be permitted by provisions of this rule must submit to the department a written notification letter, on forms provided by the department, certifying that the facility meets the following conditions:

1. All paint booths and associated equipment are in compliance with the provisions of subrule 22.8(1);

2. All paint booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

3. All paint booths and associated equipment currently are or will be in compliance with or otherwise exempt from the national emissions standards for hazardous air pollutants (NESHAP) for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

(2) The certification must be signed by one of the following individuals:

1. For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).

2. For partnerships, a general partner.

3. For sole proprietorships, the proprietor.

4. For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.8(2) Reserved.

[**ARC 7565B**, IAB 2/11/09, effective 3/18/09; **ARC 8215B**, IAB 10/7/09, effective 11/11/09; **ARC 1013C**, IAB 9/18/13, effective 10/23/13]

567—22.9(455B) Special requirements for visibility protection.

22.9(1) Definitions. Definitions included in this subrule apply to the provisions set forth in rule 567—22.9(455B).

“Best available retrofit technology (BART)” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

“Deciview” means a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on an equation found in 40 CFR 51.301, as amended on July 1, 1999.

“Mandatory Class I area” means any Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

22.9(2) Best available retrofit technology (BART) applicability. A source shall comply with the provisions of subrule 22.9(3) if the source falls within numbers 1 through 20 or 22 through 26 of the “stationary source categories” of air pollutants listed in rule 22.100(455B) or is a fossil-fuel fired boiler individually totaling more than 250 million Btu’s per hour heat input and meets the following criteria:

- a. Any emission unit for which startup began after August 7, 1962; and
- b. Construction of the emission unit commenced on or before August 7, 1977; and
- c. The sum of the potential to emit, as “potential to emit” is defined in 567—20.2(455B), from emission units identified above is equal to or greater than 250 tons per year or more of one of the following pollutants: nitrogen oxides, sulfur dioxide, particulate matter (PM₁₀), or volatile organic compounds.

22.9(3) Duty to self-identify. The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(2) shall submit two copies of a completed BART Eligibility Certification Form #542-8125, which shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and other information required by the department. The completed form was required to be submitted to the Air Quality Bureau, Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, by September 1, 2005.

22.9(4) Notification. The department shall notify in writing the owner or operator or designated representative of a source of the department’s determination that either:

- a. A source meets the conditions listed in 22.9(2) (a source that meets these conditions is BART-eligible); or
- b. For the purposes of the regional haze program, a source may cause or contribute to visibility impairment in any mandatory Class I area, as identified during either:
 - (1) Regional haze plan development required by 40 CFR 51.308(d) as amended on July 6, 2005; or
 - (2) A five-year periodic review on the progress toward the reasonable progress goals required by 40 CFR 51.308(g) as amended on July 6, 2005; or
 - (3) A ten-year comprehensive periodic revision of the implementation plan required by 40 CFR 51.308(f) as amended on July 6, 2005.

22.9(5) Analysis. The department may request in writing an analysis from the owner or operator or designated representative of a source that the department has determined may be causing or contributing to visibility impairment in a mandatory Class I area.

- a. *BART control analysis.* For the purposes of BART, a source that is responsible for an impact of 1.0 deciview or more at a mandatory Class I area is considered to cause visibility impairment. A source that is responsible for an impact of 0.5 deciview or more at a mandatory Class I area is considered to contribute to visibility impairment. If a source meets either of these criteria, the owner or operator or designated representative shall prepare the BART analysis in accordance with Section IV of Appendix

Y of 40 CFR Part 51 as amended through July 5, 2005, and shall submit the BART analysis 180 days after receipt of written notification by the department that a BART analysis is required.

b. Regional haze analysis. The owner or operator or designated representative of a source subject to 22.9(4) “b” shall prepare and submit an analysis after receipt of written notification by the department that an analysis is required.

22.9(6) Control technology implementation. Following the department’s review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source identified in 22.9(4) shall:

a. Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).

b. Install, operate, and maintain the control technology as required by permits issued by the department.

22.9(7) BART exemption. The owner or operator of a source subject to the BART emission control requirements may apply for an exemption from subrule 22.9(5) in accordance with 40 CFR 51.303 as amended on July 1, 1999.

[ARC 8215B, IAB 10/7/09, effective 11/11/09]

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equipment located at grain processing plants or grain storage elevators, as “grain processing” and “grain storage elevator” are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person’s duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2) “ooo”), may apply.

22.10(1) Definitions. For purposes of rule 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

“Country grain elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives more than 50 percent of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“Country grain terminal elevator” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as “permanent storage capacity” is defined in this subrule;
3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“Feed mill equipment,” for purposes of rule 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

“Grain,” as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

“Grain processing” shall have the same definition as “grain processing” set forth in rule 567—20.2(455B).

“*Grain storage elevator*” shall have the same definition as “grain storage elevator” set forth in rule 567—20.2(455B).

“*Grain terminal elevator*,” for purposes of rule 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of more than 88,100 m³ (2.5 million U.S. bushels), as “permanent storage capacity” is defined in this subrule;
3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;
4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Permanent storage capacity*” means grain storage capacity which is inside a building, bin, or silo.

22.10(2) *Methods for determining potential to emit (PTE).* The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the potential to emit (PTE) for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀).

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B), except that “maximum capacity” means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in subrule 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in subrule 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1) and in rule 567—22.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as “feed mill equipment” is defined in subrule 22.10(1), shall calculate the PTE for PM and PM₁₀ for the feed mill equipment as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) *Classification and requirements for permits, emissions controls, record keeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.* The requirements for construction permits, operating permits, emissions controls, record keeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A “new” Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility’s PTE is less than 15 tons of PM₁₀ per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department’s receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in subparagraph 22.10(3) “a”(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under subrule 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM₁₀ on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM₁₀ calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to subparagraph 22.10(3) “a”(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised July 15, 2014), as adopted by the commission on January 15, 2008, and July 15, 2014, and adopted by reference herein (available from the department, upon request, and on the department’s Internet Web site). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than September 10, 2014. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Record keeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility’s potential PM₁₀ emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM₁₀ emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility’s operations or increase the facility’s permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any

changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM₁₀ such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM₁₀ per year and is less than or equal to 50 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM₁₀ prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM₁₀ calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) Best management practices (BMP). The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Record keeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM₁₀ emissions at a Group 2 facility will increase to more than 50

tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will increase the facility's PTE for PM₁₀ such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM₁₀ at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM₁₀ such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM₁₀ at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 4 facility is one that commenced construction,

modification or reconstruction before February 6, 2008. A “new” Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility’s permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM₁₀ at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility’s annual PTE for PM₁₀ is equal to or greater than 100 tons per year as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM₁₀ is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in rule 567—22.106(455B).

22.10(4) Feed mill equipment. This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as “feed mill equipment” is defined in subrule 22.10(1). For purposes of this subrule, the owner or operator of “existing” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of “new” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under subrule 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of “existing” feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of “new” feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in subrule 22.10(2), to determine if operating permit requirements specified in rules 567—22.100(455B) through 567—22.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under rule 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM₁₀ for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

[ARC 1561C, IAB 8/6/14, effective 9/10/14]

567—22.11 to 22.99 Reserved.

567—22.100(455B) Definitions for Title V operating permits. For purposes of rules 567—22.100(455B) to 567—22.116(455B), the following terms shall have the meaning indicated in this rule:

“*Act*” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq.

“*Actual emissions*” means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which immediately precedes that date and which is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain affected sources are calculated using a one-year period.

2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Affected facility*” means, with reference to a stationary source, any apparatus which emits or may emit any regulated air pollutant or contaminant.

“*Affected source*” means a source that includes one or more affected units subject to any emissions reduction requirement or limitation under Title IV of the Act.

“*Affected state*” means any state which is contiguous to the permitting state and whose air quality may be affected through the modification, renewal or issuance of a Title V permit; or which is within 50 miles of the permitted source.

“*Affected unit*” means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under Title IV of the Act.

“*Allowable emissions*” means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2) and 23.1(3);

2. The applicable existing source emission standard contained in 567—Chapter 23; or

3. The emissions rate specified in the air construction permit for the source.

“*Allowance*” means an authorization by the administrator under Title IV of the Act or rules promulgated thereunder to emit during or after a specified calendar year up to one ton of sulfur dioxide.

“Applicable requirement” includes the following:

1. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52;
2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including Parts C and D, of the Act;
3. Any standard or other requirement under Section 111 of the Act (subrule 23.1(2)), including Section 111(d);
4. Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;
5. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
6. Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;
7. Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;
8. Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;
9. Any standard or other requirement for tank vessels under Section 183(f) of the Act;
10. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the Act;
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the administrator has determined that such requirements need not be contained in a Title V permit; and
12. Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.

“Area source” means any stationary source of hazardous air pollutants that is not a major source as defined in rule 567—22.100(455B).

“CFR” means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that “40 CFR 51” means “Title 40 of the Code of Federal Regulations, Part 51.”

“Consumer Price Index” means for any calendar year the average of the Consumer Price Index for all urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

“Country grain elevator” shall have the same definition as “country grain elevator” set forth in subrule 22.10(1).

“Designated representative” means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72 as amended to October 24, 1997, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term “responsible official” is used in rules 567—22.100(455B) to 567—22.208(455B), it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

“Draft Title V permit” means the version of a Title V permit for which the department offers public participation or affected state review.

“Emergency generator” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities;
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

“Emissions allowable under the permit” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“Emissions unit” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the Act or any related regulations.

“EPA conditional method” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“EPA reference method” means the following methods used for performance tests and continuous monitoring systems:

1. Performance test (stack test). A stack test shall be conducted according to EPA reference methods specified in 40 CFR 51, Appendix M (as amended through December 21, 2010); 40 CFR 60, Appendix A (as amended through September 9, 2010); 40 CFR 61, Appendix B (as amended through October 17, 2000); and 40 CFR 63, Appendix A (as amended through August 20, 2010).

2. Continuous monitoring systems. Minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are as specified in 40 CFR 60, Appendix B (as amended through September 9, 2010); 40 CFR 60, Appendix F (as amended through September 9, 2010); 40 CFR 75, Appendix A (as amended through March 28, 2011); 40 CFR 75, Appendix B (as amended through March 28, 2011); and 40 CFR 75, Appendix F (as amended through March 28, 2011).

“Equipment leaks” means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems.

“Existing hazardous air pollutant source” means any source as defined in 40 CFR 61 (as amended through July 20, 2004) and 40 CFR 63.72 (as amended through December 29, 1992) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

“Facility” means, with reference to a stationary source, any apparatus which emits or may emit any air pollutant or contaminant.

“Federal implementation plan” means a plan promulgated by the administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques, and provides for attainment of the relevant national ambient air quality standard.

“Federally enforceable” means all limitations and conditions which are enforceable by the administrator including, but not limited to, the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2) and 23.1(3); the requirements of such other state rules or orders approved by the administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

“Final Title V permit” means the version of a Title V permit issued by the department that has completed all required review procedures.

“Fugitive emissions” are those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“Hazardous air pollutant” means any of the following air pollutants listed in Section 112 of the Act:

cas #	chemical name
75343	1,1-Dichloroethane
57147	1,1-Dimethyl hydrazine
71556	1,1,1-Trichloroethane
79005	1,1,2-Trichloroethane
79345	1,1,2,2-Tetrachloroethane
106887	1,2-Butylene oxide
96128	1,2-Dibromo-3-chloropropane
106934	1,2-Dibromoethane
107062	1,2-Dichloroethane
78875	1,2-Dichloropropane
122667	1,2-Diphenylhydrazine
120821	1,2,4-Trichlorobenzene
106990	1,3-Butadiene
542756	1,3-Dichloropropylene
106467	1,4-Dichlorobenzene
123911	1,4-Dioxane
53963	2-Acetylaminofluorene
532274	2-Chloroacetophenone
79469	2-Nitropropane
540841	2,2,4-Trimethylpentane
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TC-DD)
94757	2,4-D salts and esters
95807	2,4-Diaminotoluene
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
91941	3,3'-Dichlorobenzidine
119904	3,3'-Dimethoxybenzidine
119937	3,3'-Dimethylbenzidine
92671	4-Aminobiphenyl
60117	4-Dimethylaminoazobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
101144	4,4'-Methylenebis(2-chloroaniline)
101779	4,4'-methylenedianiline
534521	4,6-Dinitro-o-cresol, and salts
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone

cas #	chemical name
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
62533	Aniline
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
1332214	Asbestos (friable)
71432	Benzene
92875	Benzidine
98077	Benzoic trichloride
100447	Benzyl chloride
0	Beryllium Compounds
57578	Beta-Propiolactone
92524	Biphenyl
111444	Bis(2-chloroethyl) ether
542881	Bis(chloromethyl) ether
75252	Bromoform
74839	Bromomethane
0	Cadmium Compounds
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
108907	Chlorobenzene
510156	Chlorobenzilate
75003	Chloroethane
67663	Chloroform
74873	Chloromethane
107302	Chloromethyl methyl ether
126998	Chloroprene
0	Chromium Compounds
0	Cobalt Compounds

cas #	chemical name
0	Coke Oven Emissions
1319773	Cresol/Cresylic acid (isomers & mixture)
98828	Cumene
0	Cyanide Compounds ¹
72559	DDE
117817	Di(2-ethylhexyl) phthalate
334883	Diazomethane
132649	Dibenzofuran
84742	Dibutyl phthalate
75092	Dichloromethane
62737	Dichlorvos
111422	Diethanolamine
64675	Diethyl sulfate
68122	Dimethyl formamide
131113	Dimethyl phthalate
77781	Dimethyl sulfate
79447	Dimethylcarbamyl chloride
106898	Epichlorohydrin
140885	Ethyl acrylate
100414	Ethylbenzene
107211	Ethylene glycol
75218	Ethylene oxide
96457	Ethylene thiourea
151564	Ethyleneimine
0	Fine Mineral Fibers ³
50000	Formaldehyde
0	Glycol Ethers ² , except cas #111-76-2, ethylene glycol mono-butyl ether, also known as EGBE or 2-Butoxyethanol
76448	Heptachlor
87683	Hexachloro-1,3-butadiene
118741	Hexachlorobenzene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride
123319	Hydroquinone
78591	Isophorone

cas #	chemical name
0	Lead Compounds
58899	Lindane (all isomers)
108394	m-Cresol
108383	m-Xylene
108316	Maleic anhydride
0	Manganese Compounds
0	Mercury Compounds
67561	Methanol
72435	Methoxychlor
60344	Methyl hydrazine
74884	Methyl iodide
108101	Methyl isobutyl ketone
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tertbutyl ether
101688	Methylene bis(phenylisocyanate)
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
91203	Naphthalene
0	Nickel Compounds
98953	Nitrobenzene
121697	N,N-Dimethylaniline
90040	o-Anisidine
95487	o-Cresol
95534	o-Toluidine
95476	o-Xylene
106445	p-Cresol
106503	p-Phenylenediamine
106423	p-Xylene
56382	Parathion
87865	Pentachlorophenol
108952	Phenol
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus (yellow or white)
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls
0	Polycyclic Organic Matter ⁴
1120714	Propane sultone
123386	Propionaldehyde

cas #	chemical name
114261	Propoxur
75569	Propylene oxide
75558	Propyleneimine
91225	Quinoline
106514	Quinone
82688	Quintozene
0	Radionuclides (including Radon) ⁵
0	Selenium Compounds
100425	Styrene
96093	Styrene oxide
127184	Tetrachloroethylene
7550450	Titanium tetrachloride
108883	Toluene
584849	Toluene-2,4-diisocyanate
8001352	Toxaphene
79016	Trichloroethylene
121448	Triethylamine
1582098	Trifluralin
51796	Urethane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride
1330207	Xylene (mixed isomers)

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

¹X’CN where X=H’ or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

²Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R(OCH₂CH₂)_n-OR’ where n=1,2, or 3; R=alkyl or aryl groups; R’=R,H, or groups which, when removed, yield glycol ethers with the structure R(OCH₂CH)_n-OH. Polymers are excluded from the glycol category.

³Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees C.

⁵A type of atom which spontaneously undergoes radioactive decay.

“*High-risk pollutant*” means one of the following hazardous air pollutants listed in Table 1 in 40 CFR 63.74 as amended through October 21, 1994.

cas #	chemical name	weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether(Bis(2-chloroethyl)ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene	100
302012	Hydrazine	100
0	Manganese compounds	10
0	Mercury compounds	100
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10

cas #	chemical name	weighting factor
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10

“*Major source*” means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

For radionuclides, “major source” shall have the meaning specified by the administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe” and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

For carbon monoxide nonattainment areas (1) that are classified as “serious” and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

For particulate matter (PM-10), nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

“*Manually operated equipment*” means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand,

such as a lathe or drill press; and any dust collection system which is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

“Maximum achievable control technology (MACT)” means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source, and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the Title IV affected source category.

“Maximum achievable control technology (MACT) floor” means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emission information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best performing 5 sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information) for a category or subcategory or stationary source with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

“New Title IV affected source or unit” means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

“Nonattainment area” means an area so designated by the administrator, acting pursuant to Section 107 of the Act.

“Permit modification” means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found at rule 567—22.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found at rules 567—22.120(455B) to 567—22.147(455B). This definition of “permit modification” shall be used solely for purposes of this chapter governing Title V operating permits.

“Permit revision” means any permit modification or administrative permit amendment.

“Permitting authority” means the Iowa department of natural resources or the director thereof.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

“*Proposed Title V permit*” means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 22.107(7) “a.”

“*Regulated air contaminant*” shall mean the same thing as “regulated air pollutant.”

“*Regulated air pollutant*” means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

- Any pollutant subject to requirements under Section 112(j) of the Act. If the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and

- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM₁₀, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

“*Regulated air pollutant or contaminant (for fee calculation)*,” which is used only for purposes of rule 567—22.106(455B), means any “regulated air pollutant or contaminant” except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM₁₀;
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act.

“*Renewal*” means the process by which a permit is reissued at the end of its term.

“*Responsible official*” means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

- The delegation of authority to such representative is approved in advance by the permitting authority.

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- The designated representative for any other purposes under this chapter or the Act.

“Section 502(b)(10) changes” are changes that contravene an express permit term and which are made pursuant to rule 567—22.110(455B). Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

“State implementation plan (SIP)” means the plan adopted by the state of Iowa and approved by the administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the administrator, pursuant to the Act.

“Stationary source” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

“Stationary source categories” means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants — The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu’s per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu’s per hour heat input;
27. Any other stationary source category, which as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

“Subject to regulation” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous

oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

2. The term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009) and summing the resultant value for each to compute a tpy CO₂e.

For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

“Title V permit” means an operating permit under Title V of the Act.

“12-month rolling period” means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

[ARC 9224B, IAB 11/17/10, effective 12/22/10; ARC 9906B, IAB 12/14/11, effective 11/16/11; ARC 0330C, IAB 9/19/12, effective 10/24/12]

567—22.101(455B) Applicability of Title V operating permit requirements.

22.101(1) Except as provided in rule 567—22.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit:

- a. Any affected source subject to the provisions of Title IV of the Act;
- b. Any major source;
- c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);
- d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
- e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;
- f. Any source category designated by the Administrator pursuant to 40 CFR 70.3 as amended through December 19, 2005.

22.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to subrule 22.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

22.101(3) Election to apply for permit. Rescinded IAB 7/19/06, effective 8/23/06.

567—22.102(455B) Source category exemptions.

22.102(1) All sources listed in subrule 22.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rule making to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in subrule 22.102(3).

22.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992, publication, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

22.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters, as amended through December 14, 2000;

b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as amended through July 20, 2004;

c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as amended through December 19, 2005.

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as amended through December 19, 2005.

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as amended through December 19, 2005.

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as amended through December 19, 2005.

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as amended through December 19, 2005.

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as amended through June 23, 2003.

567—22.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit fees are not required from insignificant activities pursuant to subrule 22.106(7).

22.103(1) *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR 70.5 (as amended through July 21, 1992), these activities need not be included in the Title V permit application.

a. Mobile internal combustion and jet engines, marine vessels, and locomotives.

b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

c. Equipment or control equipment which eliminates all emissions to the atmosphere.

d. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.

e. Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.

f. Residential wood heaters, cookstoves, or fireplaces.

g. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

h. Recreational fireplaces.

i. Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.

- j.* Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems which include any industrial waste are not exempt.
- k.* Retail gasoline and diesel fuel handling facilities.
- l.* Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.
- m.* Equipment used for hydraulic or hydrostatic testing.
- n.* General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.
- o.* Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.
- p.* Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).
- q.* Administrative activities including, but not limited to, paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.
- r.* Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.
- s.* Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.
- t.* Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.
- u.* Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.
- v.* Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Clean Air Act.
- w.* Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.
- x.* Water treatment or storage systems, as follows:
 - (1) Systems for potable water or boiler feedwater.
 - (2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process streams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Clean Air Act.
- y.* Lawn care, landscape maintenance, and groundskeeping activities.
- z.* Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.
- aa.* Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)
- bb.* Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.
- cc.* Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.
- dd.* Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

ee. Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3) “g” is required at least ten working days before such action commences.)

ff. Activities associated with the construction, repair or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks and other vehicles related to the control of fugitive emissions of such roads or other areas.

gg. Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

hh. Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

ii. Construction activities at a source solely associated with the modification or building of a facility, an emission unit or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

jj. Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

22.103(2) *Insignificant activities which must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit which has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM₁₀,

0.52 tons per year of PM_{2.5} (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

2500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of “high-risk pollutant” is found in rule 567—22.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated

wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in this subparagraph (22.103(2) “b”(2)). Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in paragraph 22.103(2) “a.”

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer’s nameplate rating at full load shall be defined as the brake horsepower output at the shaft.

[ARC 1013C, IAB 9/18/13, effective 10/23/13]

567—22.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source’s failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

22.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

22.104(2) Sources making permit revisions pursuant to rule 567—22.110(455B) shall not be in violation of this rule.

567—22.105(455B) Title V permit applications.

22.105(1) Duty to apply. For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324 (two copies); and U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Initial application for an existing source. The owner or operator of a stationary source that was existing on or before April 20, 1994, shall make the first time submittals of a Title V permit application to

the department by November 15, 1994. However, the owner or operator may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 567—22.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to rule 567—22.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in rule 567—22.110(455B) shall submit to the department a written notification as specified in rule 567—22.110(455B) at least 30 days prior to the proposed change.

(6) Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in rule 567—22.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in rule 567—22.111(455B).

(7) Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in rule 567—22.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in rule 567—22.112(455B).

(8) Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in rule 567—22.113(455B) shall submit to the department an application for a significant permit modification as specified in rule 567—22.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

(9) Application for an acid rain permit. The owner or operator of a source subject to the acid rain program, as set forth in rules 567—22.120(455B) through 567—22.148(455B), shall submit an application for an initial Phase II acid rain permit by January 1, 1996 (for sulfur dioxide), or by January 1, 1998 (for nitrogen oxides).

b. Complete application. To be deemed complete, an application must provide all information required pursuant to subrule 22.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

22.105(2) Standard application form and required information. To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department of natural resources and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 567—22.106(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraphs 22.101(1)“c” and “d,” then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall

submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 567—22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

b. A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the applicant.

c. The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application:

(1) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit except where such units are exempted. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the approved fee schedule.

(2) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and the applicability of any and all requirements.

(3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any.

(4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(5) Identification and description of air pollution control equipment.

(6) Identification and description of compliance monitoring devices or activities.

(7) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(8) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(9) Calculations on which the information in subparagraphs (1) to (8) above is based.

(10) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

e. Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

f. An explanation of any proposed exemptions from otherwise applicable requirements.

g. Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to subrule 22.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to subrule 22.108(11) and rule 567—22.112(455B).

h. A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements

for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

i. Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with subrule 22.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by subrules 22.108(3), 22.108(4) or 22.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

22.105(3) Hazardous air pollutant early reduction application. Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with its Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4) “d.”

22.105(4) Acid rain application content. The acid rain application content shall be as prescribed in the acid rain rules found at rules 567—22.128(455B) and 567—22.129(455B).

22.105(5) More than one Title V operating permit for a stationary source. Following application made pursuant to subrule 22.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 1227C, IAB 12/11/13, effective 1/15/14]

567—22.106(455B) Title V permit fees.

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994.

Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than \$56 per ton without adopting the change pursuant to formal rule making.

22.106(2) *Fee calculation.* The fee amount shall be calculated based on the first 4,000 tons of each regulated air pollutant or contaminant emitted each year from each major source.

22.106(3) *Fee and documentation due dates.*

a. The fee shall be submitted annually by July 1. For emissions located in Polk County or Linn County, the fee shall be submitted with three copies of the following forms. For emissions in all remaining counties, the fee shall be submitted with two copies of the following forms:

1. Form 1.0 "Facility identification";
2. Form 5.0 "Title V annual emissions summary/fee"; and
3. Part 3 "Application certification."

b. For emissions located in Polk County or Linn County, three copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year. For emissions in all other counties, two copies of the following forms shall be submitted:

1. Form 1.0 "Facility identification";
2. Form 4.0 "Emission unit—actual operations and emissions" for each emission unit;
3. Form 5.0 "Title V annual emissions summary/fee"; and
4. Part 3 "Application certification."

Alternatively, an owner or operator may submit the required emissions inventory information through the electronic submittal format specified by the department.

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

22.106(4) *Phase I acid rain sources.* No fee shall be required to be paid for emissions which occur during the years 1993 through 1999 inclusive, with respect to any Phase I acid rain affected unit under Section 404 of the Act.

22.106(5) *Operation in Iowa.* The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while operating in Iowa.

22.106(6) *Title V exempted stationary sources.* No fee shall be required to be paid for emissions until the year in which sources exempted under subrules 22.102(1) and 22.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

22.106(7) *Insignificant activities.* No fee shall be required to be paid for insignificant activities, as defined in rule 567—22.103(455B).

22.106(8) *Correction of errors.* If an owner or operator, or the department, finds an error in a Title V emissions inventory or Title V fee payment, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory or Title V fee payment. Forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

567—22.107(455B) Title V permit processing procedures.**22.107(1) Action on application.**

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under rule 567—22.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under rule 22.112(455B), the permitting authority has complied with the requirements for public participation under subrule 22.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under subrule 22.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The administrator has received a copy of the proposed permit and any notices required under subrule 22.107(7), and has not objected to issuance of the permit under subrule 22.107(7) within the time period specified therein;

(6) If the administrator has properly objected to the permit pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, or subrule 22.107(7), then the permitting authority may issue a permit only after the administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

c. Prioritization of applications. The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4) “d.”

d. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in rule 567—22.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

e. Decision to deny a permit application. The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit the provisions of paragraph 22.107(1) “d” shall no longer be applicable. The new

application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

f. Fact sheet. A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to EPA and to any other person who requests it.

g. Relation to construction permits. The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and subrule 22.1(1).

22.107(2) Confidential information. If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the administrator. Requests for confidentiality must comply with 561—Chapter 2.

22.107(3) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations or levels of technology existing on the date the initial application is deemed complete.

22.107(4) Certification of truth, accuracy, and completeness. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.107(5) Early reduction application evaluation. Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4) “d.”

22.107(6) Public notice and public participation.

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial or renewal of a permit; or significant modification or revocation or reissuance of a permit.

b. Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. The public notice shall include the following:

- (1) Identification of the Title V source.
- (2) Name and address of the permittee.
- (3) Name and address of the permitting authority processing the permit.
- (4) The activity or activities involved in the permit action.
- (5) The emissions change involved in any permit modification.
- (6) The air pollutants or contaminants to be emitted.
- (7) The time and place of any possible public hearing.

(8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed, including the closest department office, and the times at which they shall be available for public inspection.

d. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

e. Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person's interest in the subject matter and the nature of the issues proposed to be raised at the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

f. The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

g. The permitting authority shall provide notice and opportunity for participation by affected states as provided by subrule 22.107(7).

22.107(7) Permit review by EPA and affected states.

a. Transmission of information to the administrator. Except as provided in subrule 22.107(2) or waived by the administrator, the director shall provide to the administrator a copy of each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be submitted in a computer-readable format compatible with the administrator's national database management system.

b. Review by affected states. The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to subrule 22.107(6), except to the extent that subrule 22.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

c. EPA objection. No permit for which an application must be transmitted to the administrator shall be issued if the administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 22.107(7) "a." Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

22.107(8) Public petitions to the administrator regarding Title V permits.

a. If the administrator does not object to a proposed permit, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make an objection pursuant to 40 CFR 70.8(d) as amended to July 21, 1992.

b. Any person who petitions the administrator pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, shall notify the department by certified mail of such petition immediately, and in no case more than 10 days following the date the petition is submitted to EPA. Such notice shall include a copy of the petition submitted to EPA and a separate written statement detailing the grounds for the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the administrator's objection.

c. If the administrator objects to the permit as a result of a petition filed pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, then the director shall not issue a permit until the administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the

administrator's objection, and the administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR 70.7 as amended to July 21, 1992, then the director may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

22.107(9) *A Title V permit application may be denied if:*

- a. The director finds that a source is not in compliance with any applicable requirement; or
- b. An applicant knowingly submits false information in a permit application.

22.107(10) *Retention of permit records.* The director shall keep all records associated with each permit for a minimum of five years.

567—22.108(455B) Permit content. Each Title V permit shall include the following elements:

22.108(1) Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

c. If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

d. If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the compliance extension.

e. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

f. For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

22.108(2) Permit duration. The permit shall specify a fixed term not to exceed five years except:

a. Permits issued to Title IV affected sources shall have a fixed term of five years.

b. Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

22.108(3) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subrule 22.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (as amended through October 24, 2012) available from the department;

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

d. As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

22.108(4) Record keeping. With respect to record keeping, the permit shall incorporate all applicable record-keeping requirements and require, where applicable, the following:

a. Records of required monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements;
- (2) The date(s) the analyses were performed;
- (3) The company or entity that performed the analyses;
- (4) The analytical techniques or methods used;
- (5) The results of such analyses; and
- (6) The operating conditions as existing at the time of sampling or measurement; and

b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

22.108(5) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subrule 22.107(4).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.

22.108(6) Risk management plan. Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

22.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

d. Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

- (1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.
- (2) Exceedences of applicable emission rates.
- (3) The use of any allowance prior to the year for which it was allocated.
- (4) Contravention of any other provision of the permit.

22.108(8) Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

22.108(9) Other provisions. The Title V permit shall contain provisions stating the following:

a. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

c. The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records directly to the administrator of EPA along with a claim of confidentiality.

22.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to rule 567—22.106(455B).

22.108(11) Emissions trading. A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

22.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director. Such terms and conditions:

a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

b. Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

22.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

a. Shall include all terms required under subrules 22.108(1) to 22.108(13) and subrule 22.108(15) to determine compliance;

b. Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

c. May extend the permit shield described in subrule 22.108(18) to all terms and conditions that allow such increases and decreases in emissions.

22.108(14) Federally enforceable requirements.

a. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

b. Notwithstanding paragraph "a" of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR 70.7 or 70.8 (as amended through July 21, 1992).

22.108(15) Compliance requirements. All Title V permits shall contain the following elements with respect to compliance:

a. Consistent with the provisions of subrules 22.108(3) to 22.108(5), compliance certification, testing, monitoring, reporting, and record-keeping requirements sufficient to ensure compliance with the terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of subrule 22.107(4).

b. Inspection and entry provisions which require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

c. A schedule of compliance consistent with subparagraphs 22.105(2) “h” and “j” and subrule 22.105(3).

d. Progress reports, consistent with an applicable schedule of compliance and with the provisions of paragraphs 22.105(2) “h” and “j,” to be submitted at least every six months, or more frequently if specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the administrator and the director.

f. Such additional provisions as the director may require.

g. Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

h. If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

22.108(16) Emergency provisions.

a. For the purposes of a Title V permit, an “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

b. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 22.108(16) “c” are met.

c. Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and

(4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph 22.108(5) "b." This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

22.108(17) Permit reopenings.

a. A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the administrator pursuant to the Act, provided that:

(1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;

(2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR 70.4(b)(10)(i) or (ii) as amended to May 15, 2001; or

(3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

b. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

22.108(18) Permit shield.

a. The director may expressly include in a Title V permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(1) Such applicable requirements are included and are specifically identified in the permit; or

(2) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

b. A Title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

c. A permit shield shall not alter or affect the following:

(1) The provisions of Section 303 of the Act (emergency orders), including the authority of the administrator under that section;

(2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;

(4) The ability of the department or the administrator to obtain information from the facility pursuant to Section 114 of the Act.

22.108(19) Emission trades. For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

[ARC 0330C, IAB 9/19/12, effective 10/24/12]

567—22.109(455B) General permits.

22.109(1) Applicability. The director may issue a general permit for multiple sources that contain a number of operations and processes which emit pollutants with similar characteristics and that have substantially similar requirements regarding emissions, operations, monitoring and record keeping.

General permits shall not be issued to Title IV affected sources except as provided in regulations promulgated by the administrator under Title IV of the Act.

22.109(2) *Issuance of general permits.* General permits may be issued by the director and codified in this chapter following notice and opportunity for public participation consistent with the procedures contained in subrule 22.107(6). Public participation shall be provided for a new general permit, for any revision of an existing general permit, and for renewal of an existing general permit. Permit review by the administrator and affected states shall be provided consistent with subrule 22.107(7). Each general permit shall identify criteria by which sources may qualify to operate under the general permit and shall comply with all requirements applicable to other Title V permits.

22.109(3) *Applications.* Any source that would qualify for a general permit must apply for either (a) coverage under the terms of the general permit or (b) an individual Title V permit. Applications for authority to operate under the terms of a general permit shall be made on the “General Permit Application Form” and shall specify the general permit concerned by citing the subrule containing that general permit. These applications may deviate from the Title V individual permit application but shall include all information necessary to determine qualification for, and to ensure compliance with, the general permit. If a source is later determined not to qualify for the terms and conditions of the general permit, then the source shall be subject to enforcement action for operation without a Title V operating permit.

22.109(4) *General permit content.* A general permit shall include all of the following:

- a. The terms and conditions required for all sources authorized to operate under the permit;
- b. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c. A compliance plan;
- d. Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the general permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the general permit;
- e. The requirement to submit at least every six months the results of any required monitoring;
- f. References to the authority for the term or condition;
- g. A provision specifying permit duration as a fixed term not to exceed five years;
- h. A severability clause provision pursuant to subrule 22.108(8);
- i. A provision for payment of fees pursuant to subrule 22.108(10);
- j. A provision for emissions trading pursuant to subrules 22.108(11) and 22.108(13);
- k. Other provisions pursuant to subrule 22.108(9);
- l. Statement that the Title V permit is to be kept at the site of the source as well as at the corporate offices; and
- m. The process for individual sources to apply for coverage under the general permit.

22.109(5) *Action on general permit application.*

a. Once the director has issued a general permit, any source which is a member of the class of sources covered by the general permit may apply to the director for authority to operate under the general permit.

b. Review of a general permit application. The director shall grant the conditions and terms of a general permit to all sources that apply and qualify under the identified criteria.

c. The director may grant a source’s request for authorization to operate under a general permit without repeating the public participation procedures followed in subrule 22.109(2). However, such a grant shall not be a final permit action for purposes of judicial review.

22.109(6) *General permit renewal.* The director shall review and may renew general permits every five years. A source’s authorization to operate under a general permit shall expire when the general permit expires regardless of when the authorization began during the five-year period.

22.109(7) *Relationship to individual permits.* Any source covered by a general permit may request to be excluded from coverage by applying for an individual Title V permit. Coverage under the general permit shall terminate on the date the individual Title V permit is issued.

22.109(8) *Permit shield for general permit.* Each general permit issued under this chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. Any permit under this chapter that does not expressly state that a permit shield exists shall be presumed not to provide such a shield. Notwithstanding the above provisions, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

22.109(9) *Revocations of authority to operate.*

a. The director may require any source or a class of sources authorized to operate under a general permit to individually apply for and obtain a Title V permit at any time if:

- (1) The source is not in compliance with the terms and conditions of the general permit;
- (2) The director has determined that the emissions from the source or class of sources is contributing significantly to ambient air quality standard violations and that these emissions are not adequately addressed by the terms and conditions of the general permit; or
- (3) The director has information which indicates that the cumulative effects on human health and the environment from the sources covered under the general permit are unacceptable.

b. The director shall provide written notice to all sources operating under that general permit of the proposed revocation of that general permit. Such notice shall include an explanation of the basis for the proposed action.

567—22.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

22.110(1) A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

a. The changes are not major modifications under any provision of any program required by Section 110 of the Act, modifications under Section 111 of the Act, modifications under Section 112 of the Act, or major modifications of this chapter;

b. The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

c. The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

d. The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in rules 567—22.140(455B) through 567—22.144(455B));

e. The changes comply with all applicable requirements; and

f. For each such change, the permitted source provides to the department and the administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the administrator:

(1) A brief description of the change within the permitted facility,

(2) The date on which the change will occur,

(3) Any change in emission as a result of the change,

(4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit;

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit; and

(7) Any permit term or condition no longer applicable as a result of the change.

22.110(2) Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

22.110(3) Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of subrule 22.110(1).

22.110(4) The permit shield provided in subrule 22.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

567—22.111(455B) Administrative amendments to Title V permits.

22.111(1) An administrative permit amendment is a permit revision that does any of the following:

- a.* Corrects typographical errors;
- b.* Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- c.* Requires more frequent monitoring or reporting by the permittee; or
- d.* Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

22.111(2) Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the administrator under Title IV of the Act.

22.111(3) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

22.111(4) The director shall submit to the administrator a copy of each Title V permit revised under this rule.

22.111(5) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

567—22.112(455B) Minor Title V permit modifications.

22.112(1) Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

- a.* Do not violate any applicable requirement;
- b.* Do not involve significant changes to existing monitoring, reporting, or record-keeping requirements in the Title V permit;
- c.* Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;
- d.* Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps which the source would assume to avoid classification as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;
- e.* Are not modifications under any provision of Title I of the Act; and
- f.* Are not required to be processed as a significant modification under rule 567—22.113(455B).

22.112(2) An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

- a.* A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- b.* The source's suggested draft permit;

c. Certification by a responsible official, pursuant to subrule 22.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

d. Completed forms to enable the department to notify the administrator and affected states as required by subrule 22.107(7).

22.112(3) The department shall notify the administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of subrule 22.107(7). The department shall promptly send to the administrator any notification required by subrule 22.107(7).

22.112(4) The director shall not issue a final Title V permit modification until after the administrator's 45-day review period or until the administrator has notified the director that the administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or 15 days after the end of the administrator's 45-day review period provided for in subrule 22.107(7), whichever is later, the director shall:

- a. Issue the permit modification as proposed;
- b. Deny the permit modification application;
- c. Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- d. Revise the draft permit modification and transmit to the administrator the proposed permit modification, as required by subrule 22.107(7).

22.112(5) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in paragraphs 22.112(4) "a" to "c," the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

22.112(6) Permit shield. The permit shield under subrule 22.108(18) shall not extend to minor Title V permit revisions.

567—22.113(455B) Significant Title V permit modifications.

22.113(1) Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor Title V modifications or as administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or record-keeping permit terms, and any change in the method of measuring compliance with existing requirements.

22.113(2) Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the administrator, as those requirements that apply to Title V permit issuance and renewal.

22.113(3) Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

22.113(4) For a change that is subject to the requirements for a significant permit modification (see rule 567—22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

567—22.114(455B) Title V permit reopenings.

22.114(1) Each issued Title V permit shall include provisions specifying the conditions under which the permit may be reopened and revised prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

a. The department receives notice that the administrator has granted a petition for disapproval of a permit pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, provided that the reopening may be stayed pending judicial review of that determination;

b. The department or the administrator determines that the Title V permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the Title V permit;

c. Additional applicable requirements under the Act become applicable to a Title V source, provided that the reopening on this ground is not required if the permit has a remaining term of less than three years, the effective date of the requirement is later than the date on which the permit is due to expire, or the additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit. Such a reopening shall be complete not later than 18 months after promulgation of the applicable requirement.

d. Additional requirements, including excess emissions requirements, become applicable to a Title IV affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

e. The department or the administrator determines that the permit must be revised or revoked to ensure compliance by the source with the applicable requirements.

22.114(2) Proceedings to reopen and reissue a Title V permit shall follow the procedures applicable to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

22.114(3) A notice of intent shall be provided to the Title V source at least 30 days in advance of the date the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

22.114(4) Within 90 days of receipt of a notice from the administrator that cause exists to reopen a permit, the director shall forward to the administrator and the source a proposed determination of termination, modification, revocation, or reissuance of the permit, as appropriate.

567—22.115(455B) Suspension, termination, and revocation of Title V permits.

22.115(1) Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay the Title V permit fees.

e. The permittee has failed to pay an administrative, civil or criminal penalty imposed for violations of the permit.

22.115(2) If the director suspends, terminates or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

567—22.116(455B) Title V permit renewals.

22.116(1) An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the administrator and affected states.

22.116(2) Except as provided in rule 567—22.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with rule 567—22.105(455B).

567—22.117 to 22.119 Reserved.

567—22.120(455B) Acid rain program—definitions. The terms used in rules 567—22.120(455B) through 567—22.147(455B) shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through January 24, 2008, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

"40 CFR Part 72," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 72, or the cited provision therein, as amended through January 24, 2008.

"40 CFR Part 73," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 73, or the cited provision therein, as amended through April 28, 2006.

"40 CFR Part 74," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 74, or the cited provision therein, as amended through April 28, 2006.

"40 CFR Part 75," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through February 13, 2008.

"40 CFR Part 76," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 76, or the cited provision therein, as amended through October 15, 1999.

"40 CFR Part 77," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 77, or the cited provision therein, as amended through May 12, 2005.

"40 CFR Part 78," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 78, or the cited provision therein, as amended through April 28, 2006.

"*Acid rain permit*" means the legally binding written document, or portion of such document, issued by the department (following an opportunity for appeal as set forth in 561—Chapter 7, as adopted by reference at 567—Chapter 7), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owner and operators and the designated representative of the affected source or the affected unit.

"*Department*" means the department of natural resources and is the state acid rain permitting authority.

"*Draft acid rain permit*" means the version of the acid rain permit, or the acid rain portion of a Title V operating permit, that the department offers for public comment.

"*Permit revision*" means a permit modification, fast-track modification, administrative permit amendment, or automatic permit amendment, as provided in rules 567—22.140(455B) through 567—22.144(455B).

"*Proposed acid rain permit*" means the version of the acid rain permit that the department submits to the Administrator after the public comment period, but prior to completion of the EPA permit review under 40 CFR 70.8(c) as amended through July 21, 1992.

"*Title V operating permit*" means a permit issued under rules 567—22.100(455B) through 567—22.116(455B) implementing Title V of the Act.

"*Ton*" or "*tonnage*" means any short ton (i.e., 2,000 pounds). For purposes of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions) in accordance with rule 567—25.2(455B), with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not equal to a ton.

567—22.121(455B) Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in rules 567—22.120(455B) to 567—22.147(455B) are defined as follows:

"*ASTM*" means American Society for Testing and Materials.

“*Btu*” means British thermal unit.

“*CFR*” means Code of Federal Regulations.

“*DOE*” means Department of Energy.

“*EPA*” means Environmental Protection Agency.

“*mmBtu*” means million Btu.

“*MWe*” means megawatt electrical.

“*SO₂*” means sulfur dioxide.

567—22.122(455B) Applicability.

22.122(1) Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

- a.* A unit listed in Table 1 of 40 CFR 73.10(a).
- b.* An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10, and any other existing utility unit, except a unit under subrule 22.122(2).
- c.* A utility unit, except a unit under subrule 22.122(2), that:
 - (1) Is a new unit;
 - (2) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;
 - (3) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;
 - (4) Was an exempt cogeneration facility under paragraph 22.122(2)“*d*” but during any three-calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
 - (5) Was an exempt qualifying facility under paragraph 22.122(2)“*e*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;
 - (6) Was an exempt independent power production facility under paragraph 22.122(2)“*f*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
 - (7) Was an exempt solid waste incinerator under paragraph 22.122(2)“*g*” but during any three-calendar-year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.
- (8) Is a coal-fired substitution unit that is designated in a substitution plan that was not approved and not active as of January 1, 1995, or is a coal-fired compensating unit.

22.122(2) The following types of units are not affected units subject to the requirements of the acid rain program:

- a.* A simple combustion turbine that commenced operation before November 15, 1990.
- b.* Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.
- c.* Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.
- d.* A cogeneration facility which:
 - (1) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual

electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

(2) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

e. A qualifying facility that:

(1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

f. An independent power production facility that:

(1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

g. A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three-calendar-year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the acid rain program.

h. A nonutility unit.

22.122(3) A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

567—22.123(455B) Acid rain exemptions.

22.123(1) *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

22.123(2) *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

22.123(3) *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.

567—22.124(455B) Retired units exemption. Rescinded IAB 9/9/98, effective 10/14/98.

567—22.125(455B) Standard requirements.

22.125(1) *Permit requirements.*

a. The designated representative of each affected source and each affected unit at the source shall:

(1) Submit a complete acid rain permit application under this chapter in accordance with the deadlines specified in rule 567—22.128(455B);

(2) Submit in a timely manner any supplemental information that the department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

b. The owners and operators of each affected source and each affected unit at the source shall:

(1) Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the department; and

(2) Have an acid rain permit.

22.125(2) *Monitoring requirements.*

a. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

b. The emissions measurements recorded and reported in accordance with rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

c. The requirements of rule 567—25.2(455B) and regulations implementing Section 407 of the Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

22.125(3) *Sulfur dioxide requirements.*

a. The owners and operators of each source and each affected unit at the source shall:

(1) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(2) Comply with the applicable acid rain emissions limitation for sulfur dioxide.

b. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

c. An affected unit shall be subject to the requirements under paragraph 22.125(3) "a" as follows: starting January 1, 2000, an affected unit under paragraph 22.122(1) "b"; or starting on the later of January 1, 2000, or the deadline for monitor certification under rule 567—25.2(455B), an affected unit under paragraph 22.122(1) "c."

d. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

e. An allowance shall not be deducted, in order to comply with the requirements under paragraph 22.125(3) "a," prior to the calendar year for which the allowance was allocated.

f. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under rules 567—22.123(455B) and 567—22.124(455B) and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

g. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

22.125(4) *Nitrogen oxides requirements.* The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emission limitation for nitrogen oxides, as specified in 40 CFR Sections 76.5 and 76.7; 76.6; and 76.8, 76.11, 76.12, and 76.15; or by alternative emission limitations provided for by 40 CFR 76.10, as long as the alternative emission limitation has been petitioned and demonstrated according to 40 CFR 76.14 and approved by the department.

22.125(5) *Excess emissions requirements.*

a. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and submit a copy to the department.

b. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(1) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

(2) Comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

22.125(6) *Record-keeping and reporting requirements.*

a. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or the department.

(1) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(2) All emissions monitoring information, in accordance with rule 567—25.2(455B).

(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

(4) Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

b. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under rules 567—22.146(455B) and 567—22.147(455B) and rule 567—25.2(455B).

22.125(7) *Liability.*

a. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under rules 567—22.123(455B) or 567—22.124(455B), including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to Section 113(c) of the Act and by the department pursuant to Iowa Code section 455B.146.

b. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the department pursuant to Iowa Code section 455B.146.

c. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

d. Each affected source and each affected unit shall meet the requirements of the acid rain program.

e. Any provision of the acid rain program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

f. Any provision of the acid rain program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under rule 567—22.132(455B) (Phase II repowering extension plans), Section 407 of the Act and regulations implementing Section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under rule 567—25.2(455B), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

g. Each violation of a provision of rules 567—22.120(455B) to 567—22.146(455B) and 40 CFR Parts 72, 73, 75, 76, 77, and 78 and regulations implementing Sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

22.125(8) *Effect on other authorities.* No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under rule 567—22.123(455B) or 567—22.124(455B) shall be construed as:

- a.* Except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;
- b.* Limiting the number of allowances a unit can hold; provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;
- c.* Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state rule, or limiting such state rule, including any prudence review requirements under such state law;
- d.* Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or
- e.* Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

567—22.126(455B) Designated representative—submissions.

22.126(1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72, and, concurrently, shall submit a copy to the department. Whenever the term “designated representative” is used in this rule, the term shall be construed to include the alternate designated representative.

22.126(2) Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

22.126(3) In each submission under the acid rain program, the designated representative shall certify by signature:

a. The following statement, which shall be included verbatim in such submission: “I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made.”

b. The following statement, which shall be included verbatim in such submission: “I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

22.126(4) The department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subrules 22.126(2) and 22.126(3).

22.126(5) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission, of any acid rain program submissions by the designated representative;

b. Within ten business days of receipt of a determination, of any written determination by the administrator or the department; and

c. Provided that the submission or determination covers the source or the unit.

22.126(6) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subrule 22.126(5), unless the owner or operator expressly waives the right to receive such a copy.

567—22.127(455B) Designated representative—objections.

22.127(1) Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated

representative, or the finality of any decision by the department, under the acid rain program. In the event of such communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

22.127(2) The department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

567—22.128(455B) Acid rain applications—requirement to apply.

22.128(1) Duty to apply. The designated representative of any source with an affected unit shall submit a complete acid rain permit application by the applicable deadline in subrules 22.128(2) and 22.128(3), and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its acid rain program requirements.

22.128(2) Deadlines.

a. For any source with an existing unit described under paragraph 22.122(1) “*b*,” the designated representative shall submit a complete acid rain permit application governing such unit to the department on or before January 1, 1996.

b. For any source with a new unit described under subparagraph 22.122(1) “*c*”(1), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

c. For any source with a unit described under subparagraph 22.122(1) “*c*”(2), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any source with a unit described under subparagraph 22.122(1) “*c*”(3), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any source with a unit described under subparagraph 22.122(1) “*c*”(4), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any source with a unit described under subparagraph 22.122(1) “*c*”(5), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any source with a unit described under subparagraph 22.122(1) “*c*”(6), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any source with a unit described under subparagraph 22.122(1) “*c*”(7), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

i. For a Phase II unit with a Group 1 or a Group 2 boiler, the designated representative shall submit a complete permit application and compliance plan for NO_x emissions to the department no later than January 1, 1998.

22.128(3) Duty to reapply. The designated representative shall submit a complete acid rain permit application for each source with an affected unit at least six months prior to the expiration of an existing acid rain permit governing the unit.

22.128(4) *Submission of copies.* The original and three copies of all permit applications shall be presented or mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324.
[ARC 8215B, IAB 10/7/09, effective 11/11/09]

567—22.129(455B) Information requirements for acid rain permit applications. A complete acid rain permit application shall be submitted on a form approved by the department, which includes the following elements:

22.129(1) Identification of the affected source for which the permit application is submitted;

22.129(2) Identification of each affected unit at the source for which the permit application is submitted;

22.129(3) A complete compliance plan for each unit, in accordance with rules 567—22.131(455B) and 567—22.132(455B);

22.129(4) The standard requirements under rule 567—22.125(455B); and

22.129(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

567—22.130(455B) Acid rain permit application shield and binding effect of permit application.

22.130(1) Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under paragraph 22.125(1) “b” and subrule 22.128(1); provided that any delay in issuing an acid rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the department, necessary to issue a permit.

22.130(2) Prior to the date on which an acid rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

22.130(3) A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

567—22.131(455B) Acid rain compliance plan and compliance options—general.

22.131(1) For each affected unit included in an acid rain permit application, a complete compliance plan shall include:

a. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit’s compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with rule 567—22.131(455B), one or more of the acid rain compliance options.

b. For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by subrule 22.125(4) or shall specify one or more acid rain compliance options, in accordance with Section 407 of the Act, and 40 CFR Section 76.9.

22.131(2) The compliance plan may include a multiunit compliance option under rule 567—22.132(455B) or Section 407 of the Act or regulations implementing Section 407.

a. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(1) Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

(2) A complete permit application is submitted covering each unit governed by such plan.

b. The department's approval of a plan under paragraph 22.131(2) "a" that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

22.131(3) Conditional approval. In the compliance plan, the designated representative of an affected unit may propose, in accordance with rules 567—22.131(455B) and 567—22.132(455B), any acid rain compliance option for conditional approval; provided that an acid rain compliance option under Section 407 of the Act may be conditionally proposed only to the extent provided in regulations implementing Section 407 of the Act.

a. To activate a conditionally approved acid rain compliance option, the designated representative shall notify the department in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. If the conditionally approved compliance option includes a plan described in paragraph 22.131(2) "a," the designated representative of each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on activation under rule 567—22.132(455B) and regulations implementing Section 407 of the Act.

b. The notification under paragraph 22.131(3) "a" shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

c. Upon submission of a notification meeting the requirements of paragraphs 22.131(3) "a" and "b," the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

d. A notification meeting the requirements of paragraphs 22.131(3) "a" and "b" will revise the unit's permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

22.131(4) Termination of compliance option.

a. The designated representative for a unit may terminate an acid rain compliance option by notifying the department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under rule 567—22.132(455B) and regulations implementing Section 407 of the Act. If the compliance option includes a plan described in paragraph 22.131(2) "a," the designated representative for each source governed by the plan shall sign and certify the notification.

b. The notification under paragraph 22.131(4) "a" shall specify the calendar year for which the termination will take effect.

c. Upon submission of a notification meeting the requirements of paragraphs 22.131(4) "a" and "b," the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

d. A notification meeting the requirements of paragraphs 22.131(4) "a" and "b" will revise the unit's permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

567—22.132(455B) Repowering extensions. Rescinded IAB 4/8/98, effective 5/13/98.

567—22.133(455B) Acid rain permit contents—general.

22.133(1) Each acid rain permit (including any draft acid rain permit) will contain the following elements:

a. All elements required for a complete acid rain permit application under rule 567—22.129(455B), as approved or adjusted by the department;

b. The applicable acid rain emissions limitation for sulfur dioxide; and

c. The applicable acid rain emissions limitation for nitrogen oxides.

22.133(2) Each acid rain permit is deemed to incorporate the definitions of terms under rule 567—22.120(455B).

567—22.134(455B) Acid rain permit shield. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in rules 567—22.120(455B) to 567—22.146(455B), rule 567—25.2(455B), or 40 CFR Parts 72, 73, 75, 76, 77, and 78, and the regulations implementing Section 407 of the Act, shall be deemed to be operating in compliance with the acid rain program, except as provided in paragraph 22.125(7) “f.”

567—22.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with rules 567—22.100(455B) to 567—22.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by rules 567—22.135(455B) to 567—22.145(455B).

567—22.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the administrator within ten working days following a determination by the department that the acid rain permit application is complete.

567—22.137(455B) Acid rain permit issuance procedures—statement of basis.

22.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

22.137(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

22.137(3) The department will submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

567—22.138(455B) Issuance of acid rain permits.

22.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to subrules 22.107(6) and 22.107(7)), the department will address any objections by the administrator, incorporate all necessary changes and issue or deny the acid rain permit.

22.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with rules 567—22.100(455B) to 567—22.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

22.138(3) Following the administrator’s review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR 70.8(c) as amended to July 21, 1992, the administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with rules 567—22.133(455B) and 567—22.134(455B).

22.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

22.138(5) Permit issuance deadline and effective date.

a. On or before December 31, 1997, the department will issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with rule 567—22.126(455B) and meets the requirements of rules 567—22.135(455B) to 567—22.139(455B) and rules 567—22.100(455B) to 567—22.116(455B).

b. Nitrogen oxides. Not later than January 1, 1999, the department will reopen the acid rain permit to add the acid rain program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides

in accordance with rule 567—22.126(455B). Such reopening shall not affect the term of the acid rain portion of a Title V operating permit.

c. Each acid rain permit issued in accordance with paragraph 22.138(5) “a” shall take effect by the later of January 1, 2000, or, where the permit governs a unit under paragraph 22.122(1) “c,” the deadline for monitor certification under rule 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

22.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

22.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

567—22.139(455B) Acid rain permit appeal procedures.

22.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference at 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

22.139(2) No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

22.139(3) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

22.139(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under rule 567—22.125(455B);

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under rule 567—25.2(455B);

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

22.139(5) The department will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

22.139(6) The department will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with subrules 22.107(7) and 22.107(8).

567—22.140(455B) Permit revisions—general.

22.140(1) Rules 567—22.140(455B) to 567—22.145(455B) shall govern revisions to any acid rain permit issued by the department.

22.140(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

22.140(3) The terms of the acid rain permit shall apply while the permit revision is pending.

22.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 40 CFR 70.8(c) as amended to July 21, 1992, as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with rule 567—22.143(455B).

22.140(5) The standard requirements of rule 567—22.125(455B) shall not be modified or voided by a permit revision.

22.140(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under rule 567—22.132(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

22.140(7) For permit revisions not described in rules 567—22.141(455B) and 567—22.142(455B), the department may, in its discretion, determine which of these rules is applicable.

567—22.141(455B) Permit modifications.

22.141(1) Permit modifications shall follow the permit issuance requirements of rules 567—22.135(455B) to 567—22.139(455B) and subrules 22.113(2) and 22.113(3).

22.141(2) For purposes of applying subrule 22.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with rules 567—22.140(455B) to 567—22.145(455B).

22.141(3) The following permit revisions are permit modifications:

- a.* Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator;
- b.* Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period;
- c.* Determinations concerning failed repowering projects under subrule 22.132(6); and
- d.* At the option of the designated representative submitting the permit revision, the permit revisions listed in subrule 22.142(2).

567—22.142(455B) Fast-track modifications.

22.142(1) Fast-track modifications shall follow the following procedures:

- a.* The designated representative shall serve a copy of the fast-track modification on the administrator, the department, and any person entitled to a written notice under subrules 22.107(6) and 22.107(7). Within five business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice.
- b.* The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the air quality bureau of the department and to the designated representative.
- c.* The designated representative shall submit the fast-track modification to the department on or before commencement of the public comment period.
- d.* Within 30 days of the close of the public comment period, the department will consider the fast-track modification and the comments received and approve, in whole or in part or with changes or

conditions as appropriate, or disapprove the modification. A fast-track modification shall be effective immediately upon issuance, in accordance with subrule 22.113(2) as applied to significant modifications.

22.142(2) The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this rule or permit modifications under rule 567—22.141(455B):

- a. Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;
- b. Addition of a nitrogen oxides averaging plan to a permit; and
- c. Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

567—22.143(455B) Administrative permit amendment.

22.143(1) Administrative amendments shall follow the procedures set forth at rule 567—22.111(455B). The department will submit the revised portion of the permit to the administrator within ten working days after the date of final action on the request for an administrative amendment.

22.143(2) The following permit revisions are administrative amendments:

- a. Activation of a compliance option conditionally approved by the department; provided that all requirements for activation under subrule 22.131(3) and rule 567—22.132(455B) are met;
- b. Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72;
- c. Correction of typographical errors;
- d. Changes in names, addresses, or telephone or facsimile numbers;
- e. Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the administrator and the department in accordance with Subpart B of 40 CFR Part 72;
- f. Termination of a compliance option in the permit; provided that all requirements for termination under subrule 22.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;
- g. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with rule 567—22.125(455B);
- h. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of regulations implementing Section 407 of the Act are met; and
- i. Incorporation of changes that the administrator has determined to be similar to those in paragraphs "a" through "h" of this subrule.

567—22.144(455B) Automatic permit amendment. The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

22.144(1) Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account; and

22.144(2) Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

567—22.145(455B) Permit reopenings.

22.145(1) As provided in rule 567—22.114(455B), the department will reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

22.145(2) In reopening an acid rain permit for cause, the department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of rules 567—22.135(455B) to 567—22.139(455B).

22.145(3) Any reopening of an acid rain permit shall not affect the term of the permit.

567—22.146(455B) Compliance certification—annual report.

22.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

22.146(2) The submission of complete compliance certifications in accordance with subrule 22.146(1) and rule 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under paragraph 22.108(15) “e” with regard to the acid rain portion of the source’s Title V operating permit.

567—22.147(455B) Compliance certification—units with repowering extension plans. Rescinded IAB 4/8/98, effective 5/13/98.

567—22.148(455B) Sulfur dioxide opt-ins. The department adopts by reference the provisions of 40 CFR Part 74, Acid Rain Opt-Ins.

567—22.149 to 22.199 Reserved.

567—22.200(455B) Definitions for voluntary operating permits. For the purposes of rules 567—22.200(455B) to 567—22.208(455B), the definitions shall be the same as the definitions found at rule 567—22.100(455B).

567—22.201(455B) Eligibility for voluntary operating permits.

22.201(1) Except as provided in 567—subrules 22.201(2) and 22.205(2), any person who owns or operates a major source otherwise required to obtain a Title V operating permit may instead obtain a voluntary operating permit following successful demonstration of the following:

a. That the potential to emit, as limited by the conditions of air quality permits obtained from the department, of each regulated air pollutant shall be limited to less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the potential to emit unless the source belongs to one of the stationary source categories listed in this chapter; and

b. That the actual emissions of each regulated air pollutant have been and are predicted to be less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the actual emissions unless the source belongs to one of the stationary source categories listed in this chapter; and

c. That the potential to emit of each regulated hazardous air pollutant, including fugitive emissions, shall be less than 10 tons per 12-month rolling period and the potential to emit of all regulated hazardous air pollutants, including fugitive emissions, shall be less than 25 tons per 12-month rolling period; and

d. That the actual emissions of each regulated hazardous air pollutant, including fugitive emissions, have been and are predicted to be less than 10 tons per 12-month rolling period and the actual emissions of all regulated hazardous air pollutants, including fugitive emissions, have been and are predicted to be less than 25 tons per 12-month rolling period.

22.201(2) Exceptions.

a. Any affected source subject to the provisions of Title IV of the Act or sources required to obtain a Title V operating permit under paragraph 22.101(1) “f” or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for a voluntary operating permit.

b. Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are

eligible for a voluntary operating permit. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

567—22.202(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application for an operating permit, except in compliance with a properly issued Title V operating permit or a properly issued voluntary operating permit or operating permit by rule for small sources. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

567—22.203(455B) Voluntary operating permit applications.

22.203(1) Duty to apply. Any source which would qualify for a voluntary operating permit and which would not qualify under the provisions of rule 567—22.300(455B), operating permit by rule for small sources, must apply for either a voluntary operating permit or a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in rule 567—22.202(455B) and rule 567—22.300(455B). For each source applying for a voluntary operating permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, an original and one copy of a timely and complete permit application in accordance with this rule.

a. Timely application. Each source applying for a voluntary operating permit shall submit an application:

(1) By July 1, 1996, if the source is existing on or before July 1, 1995, unless otherwise required to obtain a Title V permit under rule 567—22.101(455B);

(2) At least 6 months but not more than 12 months prior to the date of expiration if the application is for renewal;

(3) Within 12 months of becoming subject to rule 567—22.101(455B) for a new source or a source which would otherwise become subject to the Title V permit requirement after July 1, 1995.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to subrule 22.203(2).

c. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the issuance of a permit. Applicants who have filed a complete application shall have 30 days following notification by the department to file any amendments to the application.

d. Certification of truth, accuracy, and completeness. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.203(2) Standard application form and required information. To apply for a voluntary operating permit, applicants shall complete the Voluntary Operating Permit Application Form and supply all information required by the Filing Instructions. The information submitted must be sufficient to evaluate the source, its application, predicted actual emissions from the source, and the potential to emit of the source; and to determine all applicable requirements. The applicant shall submit the information called for by the application form for all emissions units, including those having insignificant activities

according to the provisions of rules 567—22.102(455B) and 567—22.103(455B). The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact;

b. A description of source processes and products (by two-digit Standard Industrial Classification Code);

c. The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application:

(1) All emissions of any regulated air pollutants from each emissions unit and information sufficient to determine which requirements are applicable to the source;

(2) Emissions in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any;

(3) The following information to the extent it is needed to determine or regulate emissions, including toxic emissions: fuels, fuel use, raw materials, production rates and operating schedules;

(4) Identification and description of air pollution control equipment;

(5) Identification and description of compliance monitoring devices or activities;

(6) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

(7) Other information required by any applicable requirement; and

(8) Calculations on which the information in (1) to (7) above is based.

(9) Fugitive emissions sources shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. Requested permit conditions sufficient to limit the operation of the source according to the requirements of rule 567—22.201(455B).

e. Requirements for compliance certification. This shall include the following:

(1) Certification of compliance for the prior year with all applicable requirements with an exception for violations of subrules 22.1(1) and 22.105(1);

(2) A list of the emission points, control equipment, and emission units in violation of subrule 22.1(1);

(3) Construction permit applications for emission points and associated equipment listed in subparagraph 22.203(2)“e”(2); and

(4) Compliance certification certified by a responsible official consistent with 22.203(1)“d.”

[ARC 8215B, IAB 10/7/09, effective 11/11/09]

567—22.204(455B) Voluntary operating permit fees. Each source in compliance with a current voluntary operating permit shall be exempt from Title V operating permit fees.

567—22.205(455B) Voluntary operating permit processing procedures.

22.205(1) Action on application.

a. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take formal action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response.

b. Public notice and public participation.

(1) The department shall provide public notice and an opportunity for public comment, including an opportunity for a hearing, before issuing or renewing a permit.

(2) Notice of the intended issuance or renewal of a permit shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The department shall also provide the administrator a copy of the notice. The department may use other means if necessary to ensure adequate notice to the affected public.

(3) The public notice shall include: identification of the source; name and address of the permittee; the activity or activities involved in the permit action; the air pollutants or contaminants to be emitted; a statement that a public hearing may be requested, or the time and place of any public hearing which has been set; the name, address, and telephone number of a department representative who may be contacted for further information; and the location of copies of the permit application and the proposed permit which are available for public inspection.

(4) At least 30 days shall be provided for public comment.

22.205(2) Denial of voluntary operating permit applications.

a. A voluntary operating permit application may be denied if:

(1) The director finds that a source is not in compliance with any applicable requirement except for subrule 22.1(1); or

(2) An applicant knowingly submits false information in a permit application.

(3) An applicant is unable to certify that the source was in compliance with all applicable requirements, except for subrule 22.1(1), for the year preceding the application.

b. Once agency action has occurred denying a voluntary operating permit, the source shall apply for a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operating without a Title V operating permit pursuant to rule 567—22.104(455B).

567—22.206(455B) Permit content.

22.206(1) Each voluntary operating permit shall include all of the following provisions:

- a. The terms and conditions required for all sources authorized to operate under the permit;
- b. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c. A certified statement from the source that each emissions unit is in compliance;
- d. Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the permit;
- e. The requirement to submit the results of any required monitoring at intervals to be specified in the permit;
- f. References to the authority for the term or condition;
- g. A provision specifying permit duration as a fixed term not to exceed five years;
- h. A statement that the voluntary operating permit is to be kept at the site of the source;
- i. A statement that the permittee must comply with all conditions of the voluntary operating permit and that any permit noncompliance is grounds for enforcement action, for a permit termination or revocation, and for an immediate requirement to obtain a Title V operating permit;
- j. A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
- k. A statement that the permit may be revoked or terminated for cause;
- l. A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;

m. A statement that the permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for revoking or terminating the permit or to determine compliance with the permit; and that, upon request, the permittee also shall furnish to the director copies of records required by the permit to be kept.

22.206(2) The following shall apply to voluntary operating permits:

a. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

b. Federally enforceable requirements.

(1) All terms and conditions in a voluntary operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

(2) Notwithstanding paragraph “a” of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.

c. All emission limitations, all controls, and all other requirements included in a voluntary permit shall be at least as stringent as any other applicable limitation or requirement in the state implementation plan or enforceable as a practical matter under the state implementation plan. For the purposes of this paragraph, “enforceable as a practical matter under the state implementation plan” shall mean that the provisions of the permit shall specify technically accurate limitations and the portions of the source subject to each limitation; the time period for the limitation (hourly, daily, monthly, annually); and the method to determine compliance including appropriate monitoring, record keeping and reporting.

d. The director shall not issue a voluntary operating permit that waives any limitation or requirement contained in or issued pursuant to the state implementation plan or that is otherwise federally enforceable.

e. The limitations, controls, and requirements in a voluntary operating permit shall be permanent, quantifiable, and otherwise enforceable.

f. Emergency provisions. For the purposes of a voluntary operating permit, an “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

567—22.207(455B) Relation to construction permits.

22.207(1) *Construction permits issued after the voluntary operating permit is issued.* If the issuance of a construction permit acts to make the source no longer eligible for a voluntary operating permit, then the source shall, in accordance with subparagraph 22.105(1)“a”(2), not operate without a Title V operating permit, and the source shall be subject to enforcement action for operating without a Title V operating permit.

22.207(2) *Relation of construction permits to voluntary operating permit renewal.* At the time of renewal of a voluntary operating permit, the conditions of construction permits issued during the term of the voluntary operating permit shall be incorporated into the voluntary operating permit. Each application for renewal of a voluntary operating permit shall include a list of construction permits issued during the term of the voluntary operating permit and shall state the effect of each of these construction permits on the conditions of the voluntary operating permit. Applications for renewal shall be accompanied by copies of all construction permits issued during the term of the voluntary operating permit.

567—22.208(455B) Suspension, termination, and revocation of voluntary operating permits.

22.208(1) Permits may be terminated, modified, revoked or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a voluntary permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay an administrative, civil or criminal penalty for violations of the permit.

22.208(2) If the director suspends, terminates or revokes a voluntary permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

567—22.209(455B) Change of ownership for facilities with voluntary operating permits. The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by a voluntary operating permit. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, and shall include the following information:

1. The date of ownership change;

2. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership; and

3. The voluntary operating permit number for the equipment changing ownership.

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567—22.210 to 22.299 Reserved.

567—22.300(455B) Operating permit by rule for small sources. Except as provided in 567—subrules 22.201(2) and 22.300(11), any source which otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources which comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in rule 567—22.100(455B).

22.300(1) Definitions for operating permit by rule for small sources. For the purposes of rule 567—22.300(455B), the definitions shall be the same as the definitions found at rule 567—22.100(455B).

22.300(2) Registration for operating permit by rule for small sources.

a. Except as provided in subrules 22.300(3) and 22.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in subrule 22.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a maximum achievable control technology (MACT) standard.

c. Nothing in this rule shall prevent any stationary source which has had a Title V operating permit or a voluntary operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or a voluntary operating permit or upon rescission of a Title V operating permit or a voluntary operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in subrule 22.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

22.300(3) Exceptions to eligibility.

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 22.300(2)“a” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

c. Sources which meet the registration criteria established in 22.300(2)“a” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

22.300(4) Stationary source with de minimus emissions. Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 22.300(8). Only the record-keeping and reporting provisions listed in 22.300(4)“b” shall apply to a stationary source with de minimus emissions or operations as specified in 22.300(4)“a”:

a. *De minimus emission and usage limits.* For the purpose of this rule a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding HAPs), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source’s emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in paragraphs “1” to “9” below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;

8. 500,000 gallons of distillate oil combusted; or

9. 71,400,000 cubic feet of natural gas combusted.

b. Record keeping for de minimis sources. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable record-keeping requirements of this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimis sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to subrule 22.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in paragraph "a" above.

22.300(5) Provision for air pollution control equipment. The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

22.300(6) Emission limitations.

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

(3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph "a" of this subrule.

22.300(7) Record-keeping requirements for non-de minimis sources. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable record-keeping requirements in this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 22.300(4) shall comply with the applicable provisions of subrule 22.300(7) (record-keeping requirements) and subrule 22.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in paragraph 22.300(4) "a."

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 22.300(7) "c" below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years, and be made available to local, state, or U.S. EPA staff upon request.

c. Record-keeping requirements for emission units and emission control equipment. Record-keeping requirements for emission units are specified below in 22.300(7) "c"(1) through 22.300(7) "c"(4). Record-keeping requirements for emission control equipment are specified in 22.300(7) "c"(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: material safety data sheets (MSDS), manufacturer's product specifications, and material VOC content reports for

each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used showing at least the product manufacturer, product name and code, VOC and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and

2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model; and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; and maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

22.300(8) *Registration and reporting requirements.*

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources, apply for a voluntary operating permit, or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V or a valid voluntary operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in rules 567—22.104(455B) and 567—22.202(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to rule 567—22.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under rule 567—22.101(455B).

2. Within 12 months of becoming subject to rule 567—22.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source which would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete the registration form must provide all information required pursuant to 22.300(8) “b.”

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, predicted actual emissions from the source; and to determine whether the source is subject to the exceptions listed in subrule 22.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—22.100(455B).

(4) Requirements for certification. Facilities which claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

“I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 22.300(8) “b.” I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of rule 567—22.300(455B) only if all applicable requirements of rule 567—22.300(455B) are met and if the registration is not denied by the director under rule 567—22.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete.” The certification must be signed by one of the following individuals.

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.300(9) *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for either a Title V operating permit or a voluntary operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 22.300(8) “*b*” for the new or modified source.

22.300(10) *Violations.*

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including rules 567—22.101(455B) to 567—22.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in subrule 22.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in subrule 22.300(6).

22.300(11) *Suspension, termination, and revocation of an operating permit by rule for small sources.*

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

22.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of

Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, and shall include the following information:

- a. The date of ownership change; and
- b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership.

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◇ Two or more ARCs

¹ Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21, 1978. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).

² Effective date of 22.100(455B), definition of “12-month rolling period”; 22.200(455B); 22.201(1) “a,” “b,”; 22.201(2) “a”; 22.206(2) “c,” delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

³ Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.

⁴ Effective date of 22.1(2), unnumbered introductory paragraphs and paragraphs “g” and “i,” delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 2001.

CHAPTER 23
EMISSION STANDARDS FOR CONTAMINANTS

[Prior to 7/1/83, DEQ Ch 4]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—23.1(455B) Emission standards.

23.1(1) *In general.* The federal standards of performance for new stationary sources (new source performance standards) shall be applicable as specified in subrule 23.1(2). The federal standards for hazardous air pollutants (national emission standards for hazardous air pollutants) shall be applicable as specified in subrule 23.1(3). The federal standards for hazardous air pollutants for source categories (national emission standards for hazardous air pollutants for source categories) shall be applicable as specified in subrule 23.1(4). The federal emission guidelines (emission guidelines) shall be applicable as specified in subrule 23.1(5). Compliance with emission standards specified elsewhere in this chapter shall be in accordance with 567—Chapter 21.

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through June 28, 2011, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Fossil fuel-fired steam generators. A fossil fuel-fired steam generating unit of more than 250 million Btu heat input for which construction, reconstruction, or modification is commenced after August 17, 1971. Any facility covered under paragraph “z” is not covered under this paragraph. (Subpart D)

b. Incinerators. An incinerator of more than 50 tons per day charging rate. (Subpart E)

c. Portland cement plants. Any of the following in a Portland cement plant: kiln; clinker cooler; raw mill system; finish mill system; raw mill dryer; raw material storage; clinker storage; finished product storage; conveyor transfer points; bagging and bulk loading and unloading systems. (Subpart F as amended through October 17, 2000)

d. Nitric acid plants. A nitric acid production unit. (Subpart G)

e. Sulfuric acid plants. A sulfuric acid production unit. (Subpart H)

f. Asphalt concrete plants. An asphalt concrete plant. (Subpart I)

g. Petroleum refineries. Any of the following at a petroleum refinery: fluid catalytic cracking unit catalyst regenerator; fluid catalytic cracking unit incinerator-waste heat boilers; fuel gas combustion devices; and claus sulfur recovery plants greater than 20 long tons per day. (Subpart J)

h. Secondary lead smelters. Any of the following in a secondary lead smelter: pot furnaces of more than 250 kilograms (550 pounds) charging capacity; blast (cupola) furnaces; and reverberatory furnaces. (Subpart L)

i. Secondary brass and bronze ingot production plants. Any of the following at a secondary brass and bronze ingot production plant: reverberatory and electric furnaces of 1000/kilograms (2205 pounds) or greater production capacity and blast (cupola) furnaces of 250 kilograms per hour (550 pounds per hour) or greater production capacity. (Subpart M)

j. Iron and steel plants. A basic oxygen process furnace. (Subpart N)

k. Sewage treatment plants. An incinerator which burns the sludge produced by municipal sewage treatment plants. (Subpart O of 40 CFR 60 and Subpart E of 40 CFR 503.)

l. Steel plants. Either of the following at a steel plant: electric arc furnaces and dust-handling equipment, the construction, modification, or reconstruction of which commenced after October 21, 1974, and on or before August 17, 1983. (Subpart AA)

m. Primary copper smelters. Any of the following at a primary copper smelter: dryer, roaster, smelting furnace and copper converter. (Subpart P)

n. Primary zinc smelters. Either of the following at a primary zinc smelter: a roaster or a sintering machine. (Subpart Q)

o. Primary lead smelter. Any of the following at a primary lead smelter: sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, converter and electric smelting furnace. (Subpart R)

p. Primary aluminum reduction plants. Either of the following at a primary aluminum reduction plant: potroom groups and anode bake plants. (Subpart S)

q. Wet process phosphoric acid plants in the phosphate fertilizer industry. A wet process phosphoric acid plant, which includes any combination of the following: reactors, filters, evaporators and hotwells. (Subpart T)

r. Superphosphoric acid plants in the phosphate fertilizer industry. A superphosphoric acid plant which includes any combination of the following: evaporators, hotwells, acid sumps, and cooling tanks. (Subpart U)

s. Diammonium phosphate plants in the phosphate fertilizer industry. A granular diammonium phosphate plant which includes any combination of the following: reactors, granulators, dryers, coolers, screens and mills. (Subpart V)

t. Triple super phosphate plants in the phosphate fertilizer industry. A triple super phosphate plant which includes any combination of the following: mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills and facilities which store run-of-pile triple superphosphate. (Subpart W)

u. Granular triple superphosphate storage facilities in the phosphate fertilizer industry. A granular triple superphosphate storage facility which includes any combination of the following: storage or curing piles, conveyors, elevators, screens and mills. (Subpart X)

v. Coal preparation plants. Any of the following at a coal preparation plant which processes more than 200 tons per day: thermal dryers; pneumatic coal cleaning equipment (air tables); coal processing and conveying equipment (including breakers and crushers); coal storage systems; and coal transfer and loading systems. (Subpart Y)

w. Ferroalloy production. Any of the following: electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment. (Subpart Z)

x. Kraft pulp mills. Any of the following in a kraft pulp mill: digester system; brown stock washer system; multiple effect evaporator system; black liquor oxidation system; recovery furnace; smelt dissolving tank; lime kiln; and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of the standard of performance are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. (Subpart BB)

y. Lime manufacturing plants. A rotary lime kiln or a lime hydrator used in the manufacture of lime at other than a kraft pulp mill. (Subpart HH)

z. Electric utility steam generating units. An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility. (Subpart Da)

aa. Stationary gas turbines. Any simple cycle gas turbine, regenerative cycle gas turbine or any gas turbine portion of a combined cycle steam/electric generating system that is not self-propelled. It may, however, be mounted on a vehicle for portability. (Subpart GG)

bb. Petroleum storage vessels. Unless exempted, any storage vessel for petroleum liquids for which the construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978, having a storage capacity greater than 151,412 liters (40,000 gallons). (Subpart K)

cc. Petroleum storage vessels. Unless exempted, any storage vessel for petroleum liquids for which the construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984, having a storage capacity greater than 151,416 liters (40,000 gallons). (Subpart Ka)

dd. Glass manufacturing plants. Any glass melting furnace. (Subpart CC)

ee. Automobile and light-duty truck surface coating operations at assembly plants. Any of the following in an automobile or light-duty truck assembly plant: prime coat operations, guide coat operations, and topcoat operations. (Subpart MM)

ff. Ammonium sulfate manufacture. Any of the following in the ammonium sulfate industry: ammonium sulfate dryers in the caprolactam by-product, synthetic, and coke oven by-product sectors of the industry. (Subpart PP)

gg. Surface coating of metal furniture. Any metal furniture surface coating operation in which organic coatings are applied. (Subpart EE)

hh. Lead-acid battery manufacturing plants. Any lead-acid battery manufacturing plant which uses any of the following: grid casting, paste mixing, three-process operation, lead oxide manufacturing, lead reclamation, other lead-emitting operations. (Subpart KK)

ii. Phosphate rock plants. Any phosphate rock plant which has a maximum plant production capacity greater than four tons per hour including the following: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production. (Subpart NN)

jj. Graphic arts industry. Publication rotogravure printing. Any publication rotogravure printing press except proof presses. (Subpart QQ)

kk. Industrial surface coating — large appliances. Any surface coating operation in a large appliance surface coating line. (Subpart SS)

ll. Metal coil surface coating. Any of the following at a metal coil surface coating operation: prime coat operation, finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet-on-wet over the prime coat and both coatings are cured simultaneously. (Subpart TT)

mm. Asphalt processing and asphalt roofing manufacturing. Any saturator, mineral handling and storage facility at asphalt roofing plants; and any asphalt storage tank and any blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants. (Subpart UU)

nn. Equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemicals manufacturing industry. Standards for affected facilities in the synthetic organic chemicals manufacturing industry (SOCMI) that commenced construction, reconstruction, or modification after January 5, 1981, and on or before November 7, 2006, are set forth in Subpart VV. Standards for affected SOCMI facilities that commenced construction, reconstruction or modification after November 7, 2006, are set forth in Subpart VVa. The standards apply to pumps, compressors, pressure relief devices, sampling systems, open-ended valves or lines (OEL), valves, and flanges or other connectors which handle VOC. (Subpart VV and Subpart VVa)

oo. Beverage can surface coating. Any beverage can surface coating lines for two-piece steel or aluminum containers in which soft drinks or beer are sold. (Subpart WW)

pp. Bulk gasoline terminals. The total of all loading racks at bulk gasoline terminals which deliver liquid product into gasoline tank trucks. (Subpart XX)

qq. Pressure sensitive tape and label surface coating operations. Any coating line used in the tape manufacture of pressure sensitive tape and label materials. (Subpart RR)

rr. Metallic mineral processing plants. Any ore processing and handling equipment. (Subpart LL)

ss. Synthetic fiber production facilities. Any solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year. (Subpart HHH)

tt. Equipment leaks of VOC in petroleum refineries. A compressor and all equipment (defined in 40 CFR, Part 60.591) within a process unit for which the construction, reconstruction, or modification commenced after January 4, 1983. (Subpart GGG)

uu. Flexible vinyl and urethane coating and printing. Each rotogravure printing line used to print or coat flexible vinyl or urethane products. (Subpart FFF)

vv. Petroleum dry cleaners. Petroleum dry-cleaning plant with a total manufacturer's rated dryer capacity equal to or greater than 38 kilograms (84 pounds): petroleum solvent dry-cleaning dryers, washers, filters, stills, and settling tanks. (Subpart JJJ)

ww. Electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983. Steel plants that produce carbon, alloy, or specialty steels: electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems. (Subpart AAa)

xx. Wool fiberglass insulation manufacturing plants. Rotary spin wool fiberglass manufacturing line. (Subpart PPP)

yy. Iron and steel plants. Secondary emissions from basic oxygen process steelmaking facilities for which construction, reconstruction, or modification commenced after January 20, 1983. (Subpart Na)

zz. Equipment leaks of VOC from on-shore natural gas processing plants. A compressor and all equipment defined in 40 CFR, Part 60.631, unless exempted, for which construction, reconstruction, or modification commenced after January 20, 1984. (Subpart KKK)

aaa. On-shore natural gas processing: SO₂ emissions. Unless exempted, each sweetening unit and each sweetening unit followed by a sulfur recovery unit for which construction, reconstruction, or modification commenced after January 20, 1984. (Subpart LLL)

bbb. Nonmetallic mineral processing plants. Unless exempted, each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or rail car loading station in fixed or portable nonmetallic mineral processing plants for which construction, reconstruction, or modification commenced after August 31, 1983. (Subpart OOO)

ccc. Industrial-commercial-institutional steam generating units. Unless exempted, each steam generating unit for which construction, reconstruction, or modification commenced after June 19, 1984, and which has a heat input capacity of more than 100 million Btu/hour. (Subpart Db)

ddd. Volatile organic liquid storage vessels. Unless exempted, volatile organic liquid storage vessels for which construction, reconstruction, or modification commenced after July 23, 1984. (Subpart Kb)

eee. Rubber tire manufacturing plants. Unless exempted, each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation that commences construction or modification after January 20, 1983. (Subpart BBB)

fff. Industrial surface coating: surface coating of plastic parts for business machines. Each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats for which construction, modification, or reconstruction begins after January 8, 1986. (Subpart TTT)

ggg. VOC emissions from petroleum refinery wastewater systems. Each individual drain system, each oil-water separator, and each aggregate facility for which construction, modification or reconstruction is commenced after May 4, 1987. (Subpart QQQ)

hhh. Magnetic tape coating facilities. Unless exempted, each coating operation and each piece of coating mix preparation equipment for which construction, modification, or reconstruction is commenced after January 22, 1986. (Subpart SSS)

iii. Polymeric coating of supporting substrates. Unless exempted, each coating operation and any on-site coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates for which construction, modification, or reconstruction begins after April 30, 1987. (Subpart VVV)

jjj. VOC emissions from synthetic organic chemical manufacturing industry air oxidation unit processes. Unless exempted, any air oxidation reactor, air oxidation reactor and recovery system or combination of two or more reactors and the common recovery system used in the production of any of the chemicals listed in 40 CFR §60.617 for which construction, modification or reconstruction commenced after October 21, 1983. (Subpart III)

kkk. VOC emissions from synthetic organic chemical manufacturing industry distillation operations. Unless exempted, any distillation unit, distillation unit and recovery system or combination of two or more distillation units and the common recovery system used in the production of any of the chemicals listed in 40 CFR §60.667 for which construction, modification or reconstruction commenced after December 30, 1983. (Subpart NNN)

lll. Small industrial-commercial-institutional steam generating units. Each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989, and that has a maximum design heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour. (Subpart Dc)

mmm. VOC emissions from the polymer manufacturing industry. Each of the following process sections in the manufacture of polypropylene and polyethylene—raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage; each material recovery section of polystyrene manufacturing using a continuous process; each polymerization reaction section of poly(ethylene terephthalate) manufacturing using a continuous process; each material recovery section of poly(ethylene terephthalate) manufacturing using a continuous process that uses dimethyl terephthalate; each raw material section of poly(ethylene terephthalate) manufacturing using a continuous process that uses terephthalic acid; and each group of fugitive emissions equipment within any process unit in the manufacturing of polypropylene, polyethylene, or polystyrene (including expandable polystyrene). The applicability date for construction, modification or reconstruction for polystyrene and poly(ethylene terephthalate) affected facilities and some polypropylene and polyethylene affected facilities is September 30, 1987. For the other polypropylene and polyethylene affected facilities the applicability date for these regulations is January 10, 1989. (Subpart DDD)

nnn. Municipal waste combustors. Unless exempted, a municipal waste combustor with a capacity greater than 225 megagrams per day of municipal solid waste for which construction is commenced after December 20, 1989, and on or before September 20, 1994, and modification or reconstruction is commenced after December 20, 1989, and on or before June 19, 1996. (Subpart Ea)

ooo. Grain elevators. A grain terminal elevator or any grain storage elevator except as provided under 40 CFR 60.304(b), August 31, 1993. A grain terminal elevator means any grain elevator which has a permanent storage capacity of more than 2.5 million U.S. bushels except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. A grain storage elevator means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of 1 million bushels. Any construction, modification, or reconstruction after August 3, 1978, is subject to this paragraph. (Subpart DD)

ppp. Mineral processing plants. Each calciner and dryer at a mineral processing plant unless excluded for which construction, modification, or reconstruction is commenced after April 23, 1986. (Subpart UUU)

qqq. VOC emissions from synthetic organic chemical manufacturing industry reactor processes. Unless exempted, each affected facility that is part of a process unit that produces any of the chemicals listed in 40 CFR §60.707 as a product, coproduct, by-product, or intermediate for which construction, modification, or reconstruction commenced after June 29, 1990. Affected facility is each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, or each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged. (Subpart RRR)

rrr. Municipal solid waste landfills, as defined by 40 CFR 60.751. Each municipal solid waste landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991, must comply. (Subpart WWW)

sss. Municipal waste combustors. Unless exempted, a municipal waste combustor with a combustion capacity greater than 250 tons per day of municipal solid waste for which construction, modification or reconstruction is commenced after September 20, 1994, or for which modification or reconstruction is commenced after June 19, 1996. (Subpart Eb)

ttt. Hospital/medical/infectious waste incinerators. Unless exempted, a hospital/medical/infectious waste incinerator for which construction is commenced after June 20, 1996, or for which modification is commenced after March 16, 1998. (Subpart Ec)*

*As of November 24, 2010, the adoption by reference of Part 60 Subpart Ec is rescinded.

uuu. New small municipal waste combustion units. Unless exempted, this standard applies to a small municipal waste combustion unit that commenced construction after August 30, 1999, or small municipal waste combustion units that commenced reconstruction or modification after June 6, 2001. (Part 60, Subpart AAAA)

vvv. Commercial and industrial solid waste incineration. Unless exempted, this standard applies to units for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001. (Part 60, Subpart CCCC)

www. Other solid waste incineration (OSWI) units. Unless exempted, this standard applies to other solid waste incineration (OSWI) units for which construction is commenced after December 9, 2004, or for which modification or reconstruction is commenced on or after June 16, 2006. (Part 60, Subpart EEEE)

xxx. Reserved.

yyy. Stationary compression ignition internal combustion engines. Unless otherwise exempted, these standards apply to each stationary compression ignition internal combustion engine whose construction, modification or reconstruction commenced after July 11, 2005. (Part 60, Subpart IIII)

zzz. Stationary spark ignition internal combustion engines. These standards apply to each stationary spark ignition internal combustion engine whose construction, modification or reconstruction commenced after June 12, 2006. (Part 60, Subpart JJJJ)

aaaa. Stationary combustion turbines. Unless otherwise exempted, these standards apply to stationary combustion turbines with a heat input at peak load equal to or greater than 10 MMBtu per hour, based on the higher heating value of the fuel, that commence construction, modification, or reconstruction after February 18, 2005. (Part 60, Subpart KKKK)

23.1(3) Emission standards for hazardous air pollutants. The federal standards for emissions of hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended or corrected through May 16, 2007, and 40 CFR Part 503 as adopted on August 4, 1999, are adopted by reference, except 40 CFR §61.20 to §61.26, §61.90 to §61.97, §61.100 to §61.108, §61.120 to §61.127, §61.190 to §61.193, §61.200 to §61.205, §61.220 to §61.225, and §61.250 to §61.256, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 CFR Part 61 subpart designation is in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

a. Asbestos. Any of the following involves asbestos emissions: asbestos mills, surfacing of roadways, manufacturing operations, fabricating, insulating, waste disposal, spraying applications and demolition and renovation operations. (Subpart M)

b. Beryllium. Any of the following stationary sources: beryllium extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium oxide, beryllium alloys, or beryllium-containing waste; and machine shops which process beryllium, beryllium oxides, or any alloy when such alloy contains more than 5 percent beryllium by weight. (Subpart C)

c. Beryllium rocket motor firing. Rocket motor test sites. (Subpart D)

d. Mercury. Any of the following involving mercury emissions: mercury ore processing facilities, mercury cell chlor-alkali plants, sludge incineration plants, sludge drying plants, and a combination of sludge incineration plants and sludge drying plants. (Subpart E)

e. Vinyl chloride. Ethylene dichloride purification and the oxychlorination reactor in ethylene dichloride plants. Vinyl chloride formation and purification in vinyl chloride plants. Any of the following involving polyvinyl chloride plants: reactor; stripper; mixing, weighing, and holding containers; monomer recovery system; sources following the stripper(s). Any of the following involving ethylene dichloride, vinyl chloride, and polyvinyl chloride plants: relief valve discharge; fugitive emission sources. (Subpart F)

f. Equipment leaks of benzene (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle benzene. (Subpart J)

g. Equipment leaks of volatile hazardous air pollutants (fugitive emission sources). Any pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, product accumulator vessels, and control devices or systems which handle volatile hazardous air pollutants. (Subpart V)

h. Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities. Each metallic arsenic production plant and each arsenic trioxide plant that processes low-grade arsenic bearing materials by a roasting condensation process. (Subpart P)

i. Inorganic arsenic emissions from glass manufacturing plants. Each glass melting furnace (except pot furnaces) that uses commercial arsenic as a raw material. (Subpart N)

j. Inorganic arsenic emissions from primary copper smelters. Each copper converter at any new or existing primary copper smelter except as noted in 40 CFR §61.172(a). (Subpart O)

k. Benzene emissions from coke by-product recovery plants. Each of the following sources at furnace and foundry coke by-product recovery plants: tar decanters, tar storage tanks, tar-intercepting sumps, flushing-liquor circulation tanks, light-oil sumps, light-oil condensers, light-oil decanters, wash-oil decanters, wash-oil circulation tanks, naphthalene processing, final coolers, final-cooler cooling towers, and the following equipment that is intended to operate in benzene service: pumps, valves, exhausters, pressure relief devices, sampling connection systems, open-ended valves or lines, flanges or other connectors, and control devices or systems required by 40 CFR §61.135.

The provisions of this subpart also apply to benzene storage tanks, BTX storage tanks, light-oil storage tanks, and excess ammonia-liquor storage tanks at furnace coke by-product recovery plants. (Subpart L)

l. Benzene emissions from benzene storage vessels. Unless exempted, each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D 836-84 for Industrial Grade Benzene, ASTM D 835-85 for Refined Benzene-485, ASTM D 2359-85a for Refined Benzene-535, and ASTM D 4734-87 for Refined Benzene-545. These specifications are incorporated by reference as specified in 40 CFR §61.18. (Subpart Y)

m. Benzene emissions from benzene transfer operations. Unless exempted, the total of all loading racks at which benzene is loaded into tank trucks, rail cars, or marine vessels at each benzene production facility and each bulk terminal. (Subpart BB)

n. Benzene waste operations. Unless exempted, the provisions of this subrule apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, petroleum refineries, and facilities at which waste management units are used to treat, store, or dispose of waste generated by any of these listed facilities. (Subpart FF)

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through December 21, 2012, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses (except for paragraph 23.1(4) “cz,” which specifies a later date for adoption by reference). 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is

established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

a. General provisions. General provisions apply to owners or operators of affected activities or facilities except when otherwise specified in a particular subpart or in a relevant standard. (Subpart A)

b. Requirements for control technology determinations for major sources in accordance with Clean Air Act Sections 112(g) and 112(j). (40 CFR Part 63, Subpart B)

(1) Section 112(g) requirements. For the purposes of this subparagraph, the definitions shall be the same as the definitions found in 40 CFR 63.2 and 40 CFR 63.41 as amended through December 27, 1996. The owner or operator of a new or reconstructed major source of hazardous air pollutants must apply maximum achievable control technology (MACT) for new sources to the new or reconstructed major source. If the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to Section 112(d), Section 112(h), or Section 112(j) of the Clean Air Act and incorporated in another subpart of 40 CFR Part 63, excluded in 40 CFR 63.40(e) and (f), or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998, then the major source in question is not subject to the requirements of this subparagraph. The owner or operator of an affected source shall apply for a construction permit as required in 567—paragraph 22.1(1) “b.” The construction permit application shall contain an application for a case-by-case MACT determination for the major source.

(2) Section 112(j) requirements. The owner or operator of a new or existing major source of hazardous air pollutants which includes one or more stationary sources included in a source category or subcategory for which the U.S. Environmental Protection Agency has failed to promulgate an emission standard within 18 months of the deadline established under CAA 112(d) must submit a MACT application (Parts 1 and 2) in accordance with the provisions of 40 CFR 63.52, as amended through April 5, 2002, by the CAA Section 112(j) deadline. In addition, the owner or operator of a new emission unit may submit an application for a Notice of MACT Approval before construction, as defined in 40 CFR 63.41, in accordance with the provisions of 567—paragraph 22.1(3) “a.”

c. Reserved.

d. Compliance extensions for early reductions of hazardous air pollutants. Compliance extensions for early reductions of hazardous air pollutants are available to certain owners or operators of an existing source who wish to obtain a compliance extension from a standard issued under Section 112(d) of the Act. (Subpart D)

e. Reserved.

f. Emission standards for organic hazardous air pollutants from the synthetic chemical manufacturing industry. These standards apply to chemical manufacturing process units that are part of a major source. These standards include applicability provisions, definitions and other general provisions that are applicable to Subparts F, G, and H of 40 CFR 63. (Subpart F)

g. Emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater. These standards apply to all process vents, storage vessels, transfer racks, and wastewater streams within a source subject to Subpart F of 40 CFR 63. (Subpart G)

h. Emission standards for organic hazardous air pollutants for equipment leaks. These standards apply to emissions of designated organic hazardous air pollutants from specified processes that are located at a plant site that is a major source. Affected equipment includes: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems and control devices or systems required by this subpart that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63. In organic hazardous air pollutant or in organic HAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight

of total organic HAPs as determined according to the provisions of 40 CFR Part 63.161. The provisions of 40 CFR Part 63.161 also specify how to determine that a piece of equipment is not in organic HAP service. (Subpart H)

i. *Emission standards for organic hazardous air pollutants for certain processes subject to negotiated regulation for equipment leaks.* These standards apply to emissions of designated organic hazardous air pollutants from specified processes (defined in 40 CFR 63.190) that are located at a plant site that is a major source. Subject equipment includes pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems at certain source categories. These standards establish the applicability of Subpart H for sources that are not classified as synthetic organic chemical manufacturing industries. (Subpart I)

j. *Emission standards for hazardous air pollutants for polyvinyl chloride and copolymers production.* This standard applies to a polyvinyl chloride (PVC) or copolymer production facility that is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart J)

k. Reserved.

l. *Emission standards for coke oven batteries.* These standards apply to existing coke oven batteries, including by-product and nonrecovery coke oven batteries and to new coke oven batteries, or as defined in the subpart. (Subpart L)

m. *Perchloroethylene air emission standards for dry cleaning facilities (40 CFR Part 63, Subpart M).* These standards apply to the owner or operator of each dry cleaning facility that uses perchloroethylene (also known as perc). The specific standards applicable to dry cleaning facilities, including the compliance deadlines, are set out in the federal regulations contained in Subpart M. In general, dry cleaning facilities must meet the following requirements, which are set out in greater detail in Subpart M:

(1) New and existing major source dry cleaning facilities are required to control emissions to the level of the maximum achievable control technology (MACT).

(2) New and existing area source dry cleaning facilities are required to control emissions to the level achieved by generally available control technologies (GACT) or management practices.

(3) New area sources that are located in residential buildings and that commence operation after July 13, 2006, are prohibited from using perc.

(4) New area sources located in residential buildings that commenced operation between December 21, 2005, and July 13, 2006, must eliminate all use of perc by July 27, 2009.

(5) Existing area sources located in residential buildings must eliminate all use of perc by December 21, 2020.

(6) New area sources that are not located in residential buildings are prohibited from operating transfer machines.

(7) Existing area sources that are not located in residential buildings are prohibited from operating transfer machines after July 27, 2008.

(8) All sources must comply with the requirements in Subpart M for emissions control, equipment specifications, leak detection and repair, work practice standards, record keeping and reporting.

n. *Emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.* These standards limit the discharge of chromium compound air emissions from existing and new hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks at major and area sources. (Subpart N)

o. *Emission standards for hazardous air pollutants for ethylene oxide commercial sterilization and fumigation operations.* New and existing major source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level of the maximum achievable control technology (MACT). New and existing area source ethylene oxide commercial sterilization and fumigation operations are required to control emissions to the level achieved by generally available control technologies (GACT). Certain sources are exempt as described in 40 CFR 63.360. (Subpart O)

p. *Emission standards for primary aluminum reduction plants.* These standards apply to each new or existing potline, paste production plant, or anode bake furnace associated with a primary aluminum

reduction plant, and for each new pitch storage tank associated with a primary aluminum production plant, except existing furnaces not located on the same site as the primary aluminum reduction plant. (Subpart LL)

q. Emission standards for hazardous air pollutants for industrial process cooling towers. These standards apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals on or after September 8, 1994, and are either major sources or are integral parts of facilities that are major sources. (Subpart Q)

r. Emission standards for hazardous air pollutants for sources categories: gasoline distribution: (Stage 1). These standards apply to all existing and new bulk gasoline terminals and pipeline breakout stations that are major sources of hazardous air pollutants or are located at plant sites that are major sources. Bulk gasoline terminals and pipeline breakout stations located within a contiguous area or under common control with a refinery complying with 40 CFR Subpart CC are not subject to 40 CFR Subpart R standards. (Subpart R)

s. Emission standards for hazardous air pollutants for pulp and paper (noncombustion). These standards apply to pulping and bleaching process sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. Affected sources include pulp mills and integrated mills (mills that manufacture pulp and paper/paperboard) that chemically pulp wood fiber (using kraft, sulfite, soda, or semichemical methods); pulp secondary fiber; pulp nonwood fiber; and mechanically pulp wood fiber. (Subpart S)

t. Emission standards for hazardous air pollutants: halogenated solvent cleaning. These standards require batch vapor solvent cleaning machines and in-line solvent cleaning machines to meet emission standards reflecting the application of maximum achievable control technology (MACT) for major and area sources; area source batch cold cleaning machines are required to achieve generally available control technology (GACT). The subpart regulates the emissions of the following halogenated hazardous air pollutant solvents: methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chloroform. (Subpart T)

u. Emission standards for hazardous air pollutants: Group I polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of one or more elastomers including but not limited to producers of butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polybutadiene rubber/styrene butadiene rubber by solution, polysulfide rubber, styrene butadiene rubber by emulsion, and styrene butadiene latex. MACT is required for major sources. (Subpart U)

v. Reserved.

w. Emission standards for hazardous air pollutants for epoxy resins production and nonnylon polyamides production. These standards apply to all existing, new and reconstructed manufacturers of basic liquid epoxy resins and manufacturers of wet strength resins that are located at a plant site that is a major source. (Subpart W)

x. National emission standards for hazardous air pollutants from secondary lead smelting. These standards apply to all existing and new secondary lead smelters sources which use blast, reverberatory, rotary, or electric smelting furnaces for lead recovery of scrap lead that are located at major or area sources. The provisions apply to smelting furnaces, refining kettles, agglomerating furnaces, dryers, process fugitive sources, and fugitive dust. Excluded from the rule are primary lead smelters, lead refiners, and lead remelters. Hazardous air pollutants regulated under this standard include but are not limited to lead compounds, arsenic compounds, and 1,3-butadiene. (Subpart X)

y. Emission standards for marine tank vessel loading operations. This standard requires existing and new major sources to control emissions using maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). (Subpart Y)

z. Reserved.

aa. Emission standards for hazardous air pollutants for phosphoric acid manufacturing. These standards apply to all new and existing major sources of phosphoric acid manufacturing. Affected processes include, but are not limited to, wet process phosphoric acid process lines, superphosphoric

acid process lines, phosphate rock dryers, phosphate rock calciners, and purified phosphoric acid process lines. (Subpart AA)

ab. Emission standards for hazardous air pollutants for phosphate fertilizers production. These standards apply to all new and existing major sources of phosphate fertilizer production plants. Affected processes include, but are not limited to, diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings. (Subpart BB)

ac. National emission standards for hazardous air pollutants: petroleum refineries. These standards apply to petroleum refining process units and colocated emission points at new and existing major sources. Affected sources include process vents, equipment leaks, storage vessels, transfer operations, and wastewater streams. The standards also apply to marine tank vessel and gasoline loading racks. Excluded from the standard are catalyst regeneration from catalytic cracking units and catalytic reforming units, and vents from sulfur recovery units. Compliance with the standard includes emission control and prevention. (Subpart CC)

ad. Emission standards for hazardous air pollutants for off-site waste and recovery operations. This rule applies to major sources of HAP emissions which receive certain wastes, used oil, and used solvents from off-site locations for storage, treatment, recovery, or disposal at the facility. Maximum achievable control technology (MACT) is required to reduce HAP emissions from tanks, surface impoundments, containers, oil-water separators, individual drain systems and other material conveyance systems, process vents, and equipment leaks. Regulated entities include but are not limited to businesses that operate any of the following: hazardous waste treatment, storage, and disposal facilities; Resource Conservation and Recovery Act (RCRA) exempt hazardous wastewater treatment facilities other than publicly owned treatment works; used solvent recovery plants; RCRA exempt hazardous waste recycling operations; used oil re-refineries. The regulations also apply to federal agency facilities that operate any of the waste management or recovery operations. (Subpart DD)

ae. Emission standards for magnetic tape manufacturing operations. These standards apply to major sources performing magnetic tape manufacturing operations. (Subpart EE)

af. Reserved.

ag. National emission standards for hazardous air pollutants for source categories: aerospace manufacturing and rework facilities. These standards apply to major sources involved in the manufacture, repair, or rework of aerospace components and assemblies, including but not limited to airplanes, helicopters, missiles, and rockets for civil, commercial, or military purposes. Hazardous air pollutants regulated under this standard include chromium, cadmium, methylene chloride, toluene, xylene, methyl ethyl ketone, ethylene glycol, and glycol ethers. (Subpart GG)

ah. Emission standards for hazardous air pollutants for oil and natural gas production. These standards apply to all new and existing major sources of oil and natural gas production. Affected sources include, but are not limited to, processing of liquid or gaseous hydrocarbons, such as ethane, propane, butane, pentane, natural gas, and condensate extracted from field natural gas. (Subpart HH)

ai. Emission standards for hazardous air pollutants for shipbuilding and ship repair (surface coating) operations. Requires existing and new major sources to control hazardous air pollutant (HAP) emissions using the maximum achievable control technology (MACT). (Subpart II)

aj. Emission standards for hazardous air pollutants for hazardous air pollutant (HAP) emissions from wood furniture manufacturing operations. These standards apply to each facility that is engaged, either in part or in whole, in the manufacture of wood furniture or wood furniture components and that is located at a plant site that is a major source. (Subpart JJ)

ak. Emission standards for hazardous air pollutants for the printing and publishing industry. Existing and new major sources are required to control hazardous air pollutants (HAP) using the maximum achievable control technology (MACT). Affected units are publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing. (Subpart KK)

al. Emission standards for hazardous air pollutants for primary aluminum reduction plants. These standards apply to each new or existing potline, paste production plant, and anode bake furnace

associated with a primary aluminum reduction plant, and for each new pitch storage tank associated with a primary aluminum production plant. (Part 63, Subpart LL)

am. Emission standards for hazardous air pollutants for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills. (Part 63, Subpart MM)

an. Reserved.

ao. Emission standards for tanks – level 1. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart OO)

ap. Emission standards for containers. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart PP)

aq. Emission standards for surface impoundments. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart QQ)

ar. Emission standards for individual drain systems. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart RR)

as. Emission standards for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart SS)

at. Emission standards for equipment leaks—control level 1. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart TT)

au. Emission standards for equipment leaks—control level 2 standards. These provisions apply to the control of air emissions from equipment leaks for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4)“a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart UU)

av. Emission standards for oil-water separators and organic-water separators. These provisions apply when another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph

23.1(4) “a,” general provisions (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Part 63, Subpart VV)

aw. Emission standards for storage vessels (tanks)—control level 2. These provisions apply to the control of air emissions from storage vessels for which another paragraph under this rule references the use of this paragraph for such air emission control. These air emission standards for storage vessels are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing paragraph. The provisions of paragraph 23.1(4) “a,” general provisions, (Subpart A), do not apply to this paragraph except as specified in a referencing paragraph. (Subpart WW)

ax. Emission standards for ethylene manufacturing process units: heat exchange systems and waste operations. This standard applies to hazardous air pollutants (HAPs) from heat exchange systems and waste streams at new and existing ethylene production units. (Part 63, Subpart XX)

ay. Emission standards for hazardous air pollutants: generic maximum achievable control technology (Generic MACT). These standards apply to new and existing major sources of acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, polycarbonate (PC) production, carbon black production, cyanide chemicals manufacturing, ethylene production, and Spandex production. Affected processes include, but are not limited to, producers of homopolymers and copolymers of alternating oxymethylene units, acrylic fiber, modacrylic fiber synthetics composed of acrylonitrile (AN) units, hydrogen fluoride and polycarbonate. (Subpart YY)

az. to bb. Reserved.

bc. Emission standards for hazardous air pollutants for steel pickling—HCL process facilities and hydrochloric acid regeneration plants. Unless exempted, these standards apply to all new and existing major sources of hydrochloric acid process steel pickling facilities and hydrochloric acid regeneration plants. Affected processes include, but are not limited to, equipment and tanks configured for the pickling process, including the immersion, drain and rinse tanks and hydrochloric acid regeneration plants. (Subpart CCC)

bd. Emission standards for hazardous air pollutants for mineral wool production. These standards apply to all new and existing major sources of mineral wool production. Affected processes include, but are not limited to, cupolas and curing ovens. (Subpart DDD)

be. Emission standards for hazardous air pollutants from hazardous waste combustors. These standards apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, hazardous waste burning lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces, except as specified in Subpart EEE. Both area sources and major sources are subject to this subpart as of April 19, 1996, and are subject to the requirement to apply for and obtain a Title V permit. (Part 63, Subpart EEE)

bf. Reserved.

bg. Emission standards for hazardous air pollutants for pharmaceutical manufacturing. These standards apply to producers of finished dosage forms of drugs, for example, tablets, capsules, and solutions, that contain an active ingredient generally, but not necessarily, in association with inactive ingredients. Pharmaceuticals include components whose intended primary use is to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The regulations do not apply to research and development facilities. (Subpart GGG)

bh. Emission standards for hazardous air pollutants for natural gas transmission and storage. These standards apply to all new and existing major sources of natural gas transmission and storage. Natural gas transmission and storage facilities are those that transport or store natural gas prior to its entering the pipeline to a local distribution company. Affected sources include, but are not limited to, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors and delivery systems. (Subpart HHH)

bi. Emission standards for hazardous air pollutants for flexible polyurethane foam production. These standards apply to producers of slabstock, molded, and rebond flexible polyurethane

foam. The regulations do not apply to processes dedicated exclusively to the fabrication (i.e., gluing or otherwise bonding foam pieces together) of flexible polyurethane foam or to research and development. (Subpart III)

bj. Emission standards for hazardous air pollutants: Group IV polymers and resins. Applicable to existing and new major sources that emit organic HAP during the manufacture of the following polymers and resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin. MACT is required for major sources. (Subpart JJJ)

bk. Reserved.

bl. Emission standards for hazardous air pollutants for Portland cement manufacturing operations. These standards apply to all new and existing major and area sources of Portland cement manufacturing unless exempted. Cement kiln dust (CKD) storage facilities, including CKD piles and landfills, are excluded from this standard. Affected processes include, but are not limited to, all cement kilns and in-line kiln/raw mills, unless they burn hazardous waste. (Subpart LLL as amended through December 20, 2006)

bm. Emission standards for hazardous air pollutants for pesticide active ingredient production. These standards apply to all new and existing major sources of pesticide active ingredient production that manufacture organic pesticide active ingredients (PAI), including herbicides, insecticides and fungicides. Affected processes include, but are not limited to, processing equipment, connected piping and ducts, associated storage vessels, pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves and connectors. Exempted sources include research and development facilities, storage vessels already subject to another 40 CFR Part 63 NESHAP, production of ethylene, storm water from segregated sewers, water from fire-fighting and deluge systems (including testing of such systems) and various spills. (Subpart MMM)

bn. Emission standards for hazardous air pollutants for wool fiberglass manufacturing. These standards apply to all new and existing major sources of wool fiberglass manufacturing. Affected processes include, but are not limited to, all glass-melting furnaces, rotary spin (RS) manufacturing lines that produce bonded building insulation, flame attenuation (FA) manufacturing lines producing bonded pipe insulation and new FA manufacturing lines producing bonded heavy-density products. (Subpart NNN)

bo. Emission standards for hazardous air pollutants for amino/phenolic resins production. These standards apply to new or existing facilities that own or operate an amino or phenolic resins production unit. (Part 63, Subpart OOO)

bp. Emission standards for hazardous air pollutants for polyether polyols production. These standards apply to all new and existing major sources of polyether polyols. Polyether polyols are compounds formed through polymerization of ethylene oxide, propylene oxide or other cyclic ethers with compounds having one or more reactive hydrogens to form polyethers. Affected processes include, but are not limited to, storage vessels, process vents, heat exchange systems, equipment leaks and wastewater operations. (Subpart PPP)

bq. Emission standards for hazardous air pollutants for primary copper smelting. This standard applies to a new or existing primary copper smelter that is (or is part of) a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart QQQ)

br. Emission standards for hazardous air pollutants for secondary aluminum production. (Part 63, Subpart RRR)

bs. Reserved.

bt. Emission standards for hazardous air pollutants for primary lead smelting. These standards apply to all new and existing major sources of primary lead smelting. Affected processes include, but are not limited to, sintering machines, blast furnaces, dross furnaces and process fugitive sources. (Subpart TTT)

bu. Emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units. This standard applies to a new or existing

petroleum refinery that is located at a major source of hazardous air pollutants (HAPs) emissions. (Part 63, Subpart UUU)

bv. Emission standards for hazardous air pollutants publicly owned treatment works (POTW). (Part 63, Subpart VVV)

bw. Reserved.

bx. Emission standards for hazardous air pollutants for ferroalloys production: ferromanganese and silicomanganese. These standards apply to all new and existing major sources of ferroalloys production of ferromanganese and silicomanganese. Affected processes include, but are not limited to, submerged arc furnaces, metal oxygen refining (MOR) processes, crushing and screening operations, and fugitive dust sources. (Subpart XXX)

by. to bz. Reserved.

ca. Emission standards for hazardous air pollutants: municipal solid waste landfills. This standard applies to existing and new municipal solid waste (MSW) landfills. (Part 63, Subpart AAAA)

cb. Reserved.

cc. Emission standards for hazardous air pollutants for the manufacturing of nutritional yeast. (Part 63, Subpart CCCC)

cd. Emission standards for hazardous air pollutants for plywood and composite wood products (formerly plywood and particle board manufacturing). These standards apply to new and existing major sources with equipment used to manufacture plywood and composite wood products. This equipment includes dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing process. This also includes coating operations, on-site storage and wastewater treatment. However, only certain process units (defined in the federal rule) are subject to control or work practice requirements. (Part 63, Subpart DDDD)

ce. Emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline). These standards apply to new and existing major source organic liquids distribution (non-gasoline) operations, which are carried out at storage terminals, refineries, crude oil pipeline stations, and various manufacturing facilities. (Part 63, Subpart EEEE)

cf. Emission standards for hazardous air pollutants for miscellaneous organic chemical manufacturing (MON). These standards establish emission limits and work practice standards for new and existing major sources with miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. (Part 63, Subpart FFFF)

cg. Emission standards for hazardous air pollutants for solvent extraction for vegetable oil production. (Part 63, Subpart GGGG)

ch. Emission standards for hazardous air pollutants for wet-formed fiberglass mat production. This standard applies to wet-formed fiberglass mat production plants that are major sources of hazardous air pollutants. These plants may be stand-alone facilities or located with asphalt roofing and processing facilities. (Part 63, Subpart HHHH)

ci. Emission standards for hazardous air pollutants for surface coating of automobiles and light-duty trucks. These standards apply to new, reconstructed, or existing affected sources, as defined in the standard, that are located at a facility which applies topcoat to new automobile or new light-duty truck bodies or body parts for new automobiles or new light-duty trucks and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart IIII)

cj. Emission standards for hazardous air pollutants: paper and other web coating. This standard applies to a facility that is engaged in the coating of paper, plastic film, metallic foil, and other web surfaces located at a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart JJJJ)

ck. Emission standards for hazardous air pollutants for surface coating of metal cans. These standards apply to a metal can surface coating operation that uses at least 5,700 liters (1,500 gallons (gal)) of coatings per year and is a major source, is located at a major source, or is part of a major source of hazardous air pollutant emissions. Coating operations located at an area source are not subject to

this rule. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart KKKK)

cl. Reserved.

cm. Emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products. These standards apply to miscellaneous metal parts and products surface coating facilities that are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. A miscellaneous metal parts and products surface coating facility that is located at an area source is not subject to this standard. Certain sources are exempt as described in the standard. (Part 63, Subpart MMMM)

cn. Emission standards for hazardous air pollutants: surface coating of large appliances. This standard applies to a facility that applies coatings to large appliance parts or products, and is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAPs). The large appliances source category includes facilities that apply coatings to large appliance parts or products. Large appliances include “white goods” such as ovens, refrigerators, freezers, dishwashers, laundry equipment, trash compactors, water heaters, comfort furnaces, electric heat pumps and most HVAC equipment intended for any application. (Part 63, Subpart NNNN)

co. Emission standards for hazardous air pollutants for printing, coating, and dyeing of fabrics and other textiles. These standards apply to new and existing facilities with fabric or other textile coating, printing, slashing, dyeing, or finishing operations, or group of such operations, that are a major source of hazardous air pollutants or are part of a facility that is a major source of hazardous air pollutants. Coating, printing, slashing, dyeing, or finishing operations located at an area source are not subject to this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart OOOO)

cp. Emission standards for surface coating of plastic parts and products. These standards apply to new and existing major sources with equipment used to coat plastic parts and products. The surface coating application process includes drying/curing operations, mixing or thinning operations, and cleaning operations. Coating materials include, but are not limited to, paints, stains, sealers, topcoats, basecoats, primers, inks, and adhesives. (Part 63, Subpart PPPP)

cq. Emission standards for hazardous air pollutants for surface coating of wood building products. These standards establish emission limitations, operating limits, and work practice requirements for wood building products surface coating facilities that use at least 1,100 gallons of coatings per year and are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. Wood building products surface coating facilities located at an area source are not subject to this standard. Several exclusions from this source category are listed in the standard. (Part 63, Subpart QQQQ)

cr. Emission standards for hazardous air pollutants: surface coating of metal furniture. This standard applies to a metal furniture surface coating facility that is a major source, is located at a major source, or is part of a major source of HAP emissions. A metal furniture surface coating facility is one that applies coatings to metal furniture or components of metal furniture. Metal furniture means furniture or components that are constructed either entirely or partially from metal. (Part 63, Subpart RRRR)

cs. Emission standards for hazardous air pollutants: surface coating of metal coil. This standard requires that all new and existing “major” air toxics sources in the metal coil coating industry meet specific emission limits. Metal coil coating is the process of applying a coating (usually protective or decorative) to one or both sides of a continuous strip of sheet metal. Industries using coated metal include: transportation, building products, appliances, can manufacturing, and packaging. Other products using coated metal coil include measuring tapes, ventilation systems for walls and roofs, lighting fixtures, office filing cabinets, cookware, and sign stock material. (Part 63, Subpart SSSS)

ct. Emission standards for hazardous air pollutants for leather finishing operations. This standard applies to a new or existing leather finishing operation that is a major source of hazardous air pollutants (HAPs) emissions or that is located at, or is part of, a major source of HAP emissions. In general, a leather finishing operation is a single process or group of processes used to adjust and improve the

physical and aesthetic characteristics of the leather surface through multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers. (Part 63, Subpart TTTT)

cu. Emission standards for hazardous air pollutants for cellulose products manufacturing. This standard applies to a new or existing cellulose products manufacturing operation that is located at a major source of HAP emissions. Cellulose products manufacturing includes both the miscellaneous viscose processes source category and the cellulose ethers production source category. (Part 63, Subpart UUUU)

cv. Emission standards for hazardous air pollutants for boat manufacturing. (Part 63, Subpart VVVV)

cw. Emission standards for hazardous air pollutants: reinforced plastic composites production. This standard applies to a new or an existing reinforced plastic composites production facility that is located at a major source of HAP emissions. (Part 63, Subpart WWWW)

cx. Emission standards for hazardous air pollutants: rubber tire manufacturing. This standard applies to a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions. Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires, the production of tire cord, and the application of puncture sealant. (Part 63, Subpart XXXX)

cy. Emission standards for hazardous air pollutants for stationary combustion turbines. These standards apply to stationary combustion turbines which are located at a major source of hazardous air pollutant emissions. Several subcategories have been defined within the stationary combustion turbine source category. Each subcategory has distinct requirements as specified in the standards. These standards do not apply to stationary combustion turbines located at an area source of hazardous air pollutant emissions. (Part 63, Subpart YYYY)

cz. Emission standards for stationary reciprocating internal combustion engines. These standards apply to new and existing major sources and to new and existing area sources with stationary reciprocating internal combustion engines (RICE). For purposes of these standards, stationary RICE means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ZZZZ, as amended through January 30, 2013)

da. Emission standards for hazardous air pollutants for lime manufacturing plants. These standards regulate hazardous air pollutant emissions from new and existing lime manufacturing plants that are major sources, are colocated with major sources, or are part of major sources. Additional applicability criteria and exemptions from these standards may apply. (Part 63, Subpart AAAAA)

db. Emission standards for hazardous air pollutants: semiconductor manufacturing. These standards apply to new and existing major sources with semiconductor manufacturing. (Part 63, Subpart BBBB)

dc. Emission standards for hazardous air pollutants for coke ovens: pushing, quenching, and battery stacks. This standard applies to a new or existing coke oven battery at a plant that is a major source of HAP emissions. (Part 63, Subpart CCCCC)

dd. Emission standards for industrial, commercial and institutional boilers and process heaters. These standards apply to new and existing major sources with industrial, commercial or institutional boilers and process heaters. (Part 63, Subpart DDDDD)*

*As of April 15, 2009, the adoption by reference of Part 63, Subpart DDDDD, is rescinded. On July 30, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart DDDDD, in its entirety, and requiring EPA to repromulgate final standards for industrial, commercial or institutional boilers and process heaters at new and existing major sources.

de. Emission standards for hazardous air pollutants for iron and steel foundaries. These standards apply to each new or existing iron and steel foundary that is a major source of hazardous air pollutant emissions. A new affected source is an iron and steel foundary for which construction or reconstruction

began after December 23, 2002. An existing affected source is an iron and steel foundry for which construction or reconstruction began on or before December 23, 2002. (Part 63, Subpart EEEEE)

df. Emission standards for hazardous air pollutants for integrated iron and steel manufacturing. These standards apply to affected sources at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at an integrated iron and steel manufacturing facility that is, or is part of, a major source of hazardous air pollutant emissions. (Part 63, Subpart FFFFF)

dg. Emission standards for hazardous air pollutants: site remediation. These standards apply to new and existing major sources with certain types of site remediation activity on the source's property or on a contiguous property. These standards control hazardous air pollutant (HAP) emissions at major sources where remediation technologies and practices are used at the site to clean up contaminated environmental media (e.g., soil, groundwater, or surface water) or certain stored or disposed materials that pose a reasonable potential threat to contaminate environmental media.

Some site remediations already regulated by rules established under the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) are not subject to these standards, as specified in Subpart GGGGG. There are also exemptions for short-term remediation and for certain leaking underground storage tanks, as specified in Subpart GGGGG. (Part 63, Subpart GGGGG)

dh. Emission standards for hazardous air pollutants for miscellaneous coating manufacturing. These standards establish emission limits and work practice requirements for new and existing miscellaneous coating manufacturing operations, including, but not limited to, process vessels, storage tanks, wastewater, transfer operations, equipment leaks, and heat exchange systems. (Part 63, Subpart HHHHH)

di. Emission standards for mercury emissions from mercury cell chlor-alkali plants. These standards apply to the chlorine production source category. This source category contains the mercury cell chlor-alkali plant subcategory and includes all plants engaged in the manufacture of chlorine and caustic in mercury cells. These standards define two affected sources: mercury cell chlor-alkali production facilities and mercury recovery facilities. (Part 63, Subpart IIIII)

dj. Emission standards for hazardous air pollutants for brick and structural clay products manufacturing. These standards apply to new and existing brick and structural clay products manufacturing facilities that are, are located at, or are part of a major source of hazardous air pollutant emissions. (Part 63, Subpart JJJJJ)*

*As of April 15, 2009, the adoption by reference of Part 63, Subpart JJJJJ, is rescinded. On June 18, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart JJJJJ, in its entirety, and requiring EPA to repromulgate final standards for brick and structural clay products manufacturing at new and existing major sources.

dk. Emission standards for hazardous air pollutants for clay ceramics manufacturing. These standards apply to clay ceramics manufacturing facilities that are, are located at, or are part of a major source of hazardous air pollutant emissions. The clay ceramics manufacturing source category includes those facilities that manufacture pressed floor tile, pressed wall tile, and other pressed tile; or sanitaryware, such as toilets and sinks. (Part 63, Subpart KKKKK)

dl. Emission standards for hazardous air pollutants: asphalt processing and asphalt roofing manufacturing. This standard applies to an existing or new asphalt processing or asphalt roofing manufacturing facility that is a major source of hazardous air pollutants (HAPs) emissions, or is located at, or is part of a major source of HAP emissions. (Part 63, Subpart LLLLL)

dm. Emission standards for hazardous air pollutants: flexible polyurethane foam fabrication operations. This standard applies to a new or existing source at a flexible polyurethane foam fabrication facility. The standard defines two affected sources (units or collections of units to which a given standard or limit applies) corresponding to the two subcategories, loop splitter adhesive use or flame lamination. (Part 63, Subpart MMMMM)

dn. Emission standards for hazardous air pollutants: hydrochloric acid production. This standard applies to a new or existing HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater during its normal operations and is located at, or is part of, a major source of HAP. This does not include HCl production facilities that only occasionally produce liquid HCl product at a concentration of 30 weight percent or greater. (Part 63, Subpart NNNNN)

do. Reserved.

dp. Emission standards for hazardous air pollutants: engine test cells/stands. This standard applies to an engine test cell/stand that is located at a major source of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile engines. (Part 63, Subpart PPPPP)

dq. Emission standards for hazardous air pollutants for friction materials manufacturing facilities. This standard applies to a new or existing friction materials manufacturing facility that is (or is part of) a major source of hazardous air pollutants (HAPs) emissions. Friction materials manufacturing facilities produce friction materials for use in brake and clutch assemblies. (Part 63, Subpart QQQQQ)

dr. Emission standards for hazardous air pollutants: taconite iron ore processing. These standards apply to new and existing taconite iron ore processing plants that are, or are part of, a major source of HAP emissions. (Part 63, Subpart RRRRR)

ds. Emission standards for hazardous air pollutants for refractory products manufacturing. This standard applies to a new or existing refractory products manufacturing facility that is, is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions. (Part 63, Subpart SSSSS)

dt. Emission standards for hazardous air pollutants: primary magnesium refining. These standards apply to primary magnesium refining plants that are, or are part of, a major source of HAP emissions. (Part 63, Subpart TTTTT)

du. and *dv.* Reserved.

dw. Emission standards for hazardous air pollutants for hospital ethylene oxide sterilizer area sources. This standard applies to a hospital that is an area source for hazardous air pollutant emissions and that owns or operates a new or existing ethylene oxide sterilization facility. (Part 63, Subpart WWWW)

dx. Reserved.

dy. Emission standards for hazardous air pollutants for electric arc furnace steelmaking area sources. This standard applies to new or existing electric arc furnace (EAF) steelmaking facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart YYYYY)

dz. Emission standards for hazardous air pollutants for iron and steel foundry area sources. This standard applies to new or existing iron and steel foundries that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ZZZZZ)

ea. Reserved.

eb. Emission standards for hazardous air pollutants for gasoline distribution area sources: bulk terminals, bulk plants and pipeline facilities. This standard applies to new and existing bulk gasoline terminals, pipeline breakout stations, pipeline pumping stations and bulk gasoline plants that are area sources for hazardous air pollutant emissions. (Part 63, Subpart BBBBBB)

ec. Emission standards for hazardous air pollutants for area sources: gasoline dispensing facilities. This standard applies to new and existing gasoline dispensing facilities (GDF) that are area sources for hazardous air pollutant emissions. The affected equipment includes each gasoline cargo tank during delivery of product to GDF and also includes each storage tank. The equipment used for refueling of motor vehicles is not covered under these standards. (Part 63, Subpart CCCCCC)

ed. to *eg.* Reserved.

eh. Emission standards for hazardous air pollutants for area sources: paint stripping and miscellaneous surface coating operations. This standard applies to new or existing area sources of hazardous air pollutant emissions that engage in any of the following activities: (1) paint stripping operations that use methylene chloride (MeCl)-containing paint stripping formulations; (2) spray application of coatings to motor vehicles or mobile equipment; or (3) spray application of coatings to

plastic or metal substrate with coatings that contain compounds of chromium (Cr), lead (Pb), manganese (Mn), nickel (Ni) or cadmium (Cd). (Part 63, Subpart HHHHHH)

ei. to *ek.* Reserved.

el. *Emission standards for hazardous air pollutants for acrylic and modacrylic fibers production area sources.* This standard applies to acrylic and modacrylic fibers production plants that are area sources for hazardous air pollutant emissions. (Part 63, Subpart LLLLLL)

em. *Emission standards for hazardous air pollutants for carbon black production area sources.* This standard applies to carbon black production plants that are area sources for hazardous air pollutants. (Part 63, Subpart MMMMMM)

en. *Emission standards for hazardous air pollutants for chemical manufacturing of chromium compounds area sources.* This standard applies to plants that produce chromium compounds and are area sources for hazardous air pollutants. (Part 63, Subpart NNNNNN)

eo. *Emission standards for hazardous air pollutants for flexible polyurethane foam production and fabrication area sources.* This standard applies to plants that produce flexible polyurethane foam or rebond foam, and plants that fabricate polyurethane foam, that are area sources for hazardous air pollutants. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart OOOOOO)

ep. *Emission standards for hazardous air pollutants for lead acid battery manufacturing area sources.* This standard applies to lead acid battery manufacturing plants that are area sources for hazardous air pollutants. Affected sources include all grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with a lead acid battery manufacturing plant. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart PPPPPP)

eq. *Emission standards for hazardous air pollutants for wood preserving area sources.* This standard applies to wood preserving operations that are area sources for hazardous air pollutants. This standard applies to both new and existing area sources. An affected source is existing if construction or reconstruction commenced on or before April 4, 2007. An affected source is new if construction or reconstruction commenced after April 4, 2007. (Part 63, Subpart QQQQQQ)

er. *Emission standards for hazardous air pollutants for clay ceramics manufacturing area sources.* This standard applies to any new or existing clay ceramics manufacturing facility with an atomized glaze spray booth or kiln that fires glazed ceramic ware, that processes more than 50 tons per year of wet clay, and that is an area source for hazardous air pollutant emissions. (Part 63, Subpart RRRRRR)

es. *Emission standards for hazardous air pollutants for glass manufacturing area sources.* This standard applies to any new or existing glass manufacturing facility that is an area source for hazardous air pollutant emissions and meets the following criteria: (1) manufactures flat glass, glass containers or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers or other shapes; and (2) uses one or more continuous furnaces to produce glass at a rate of at least 50 tons per year and that contains compounds of one or more “glass manufacturing metal HAP,” as defined in 40 CFR 63.11459, as raw materials in a glass manufacturing batch formulation. (Part 63, Subpart SSSSSS)

et. *Emissions standards for hazardous air pollutants for secondary nonferrous metals processing area sources.* This standard applies to any new or existing secondary nonferrous metals processing facility that is an area source for hazardous air pollutant emissions. This standard applies to all crushing and screening operations at a secondary zinc processing facility and to all furnace melting operations located at any secondary nonferrous metals processing facility. (Part 63, Subpart TTTTTT)

eu. Reserved.

ev. Emission standards for hazardous air pollutants for area sources: chemical manufacturing. This standard applies to chemical manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart VVVVVV)

ew. Emission standards for hazardous air pollutants for area sources: plating and polishing. This standard applies to plating and polishing activities at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart WWWWWW)

ex. Emission standards for hazardous air pollutants for area sources: metal fabrication and finishing. This standard applies to new and existing facilities in which the primary activity or activities at the facility are metal fabrication and finishing and that are area sources for hazardous air pollutant emissions. (Part 63, Subpart XXXXXX)

ey. Reserved.

ez. Emission standards for hazardous air pollutants for area sources: aluminum, copper, and other nonferrous foundries. This standard applies to aluminum, copper, and other nonferrous foundries at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ZZZZZZ)

fa. and fb. Reserved.

fc. Emission standards for hazardous air pollutants for area sources: paint and allied products manufacturing. This standard applies to paint and allied products manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart CCCCCC)

fd. Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing. This standard applies to prepared feeds manufacturing that produces animal feed products (not including feed for cats or dogs) and uses chromium or manganese compounds at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart DDDDDDD)

23.1(5) Emission guidelines. The emission guidelines and compliance times for existing sources, as defined in 40 Code of Federal Regulations Part 60 as amended through June 9, 2006, shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. The control of the designated pollutants will be in accordance with federal standards established in Sections 111 and 129 of the Act and 40 CFR Part 60, Subpart B (Adoption and Submittal of State Plans for Designated Facilities), and the applicable subpart(s) for the existing source. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

a. Emission guidelines for municipal solid waste landfills (Subpart Cc). Emission guidelines and compliance times for the control of certain designated pollutants from designated municipal solid waste landfills shall be in accordance with federal standards established in Subparts Cc (Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills) and WWW (Standards of Performance for Municipal Solid Waste Landfills) of 40 CFR Part 60.

(1) Definitions. For the purpose of 23.1(5)“a,” the definitions have the same meaning given to them in the Act and 40 CFR Part 60, Subparts A (General Provisions), B, and WWW, if not defined in this subparagraph.

“Municipal solid waste landfill” or “MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill or a lateral expansion.

(2) Designated facilities.

1. The designated facility to which the emission guidelines apply is each existing MSW landfill for which construction, reconstruction or modification was commenced before May 30, 1991.

2. Physical or operational changes made to an existing MSW landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, Subpart WWW (40 CFR 60.750).

3. For MSW landfills subject to rule 567—22.101(455B) only because of applicability to subparagraph 23.1(5)“a”(2), the following apply for obtaining and maintaining a Title V operating permit under 567—22.104(455B):

The owner or operator of an MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain an operating permit for the landfill.

The owner or operator of an MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on or before June 22, 1998, becomes subject to the requirements of 567—subrule 22.105(1) on September 20, 1998. This requires the landfill to submit a Title V permit application to the Air Quality Bureau, Department of Natural Resources, no later than September 20, 1999.

The owner or operator of a closed MSW landfill does not have to maintain an operating permit for the landfill if either of the following conditions are met: the landfill was never subject to the requirement for a control system under subparagraph 23.1(5)“a”(3); or the owner or operator meets the conditions for control system removal specified in 40 CFR § 60.752(b)(2)(v).

(3) Emission guidelines for municipal solid waste landfill emissions.

1. MSW landfill emissions at each MSW landfill meeting the conditions below shall be controlled. A design capacity report must be submitted to the director by November 18, 1997.

The landfill has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. All calculations used to determine the maximum design capacity must be included in the design capacity report.

The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or more. If the MSW landfill’s design capacity exceeds the established thresholds in 23.1(5)“a”(3)“1,” the NMOC emission rate calculations must be provided with the design capacity report.

2. The planning and installation of a collection and control system shall meet the conditions provided in 40 CFR 60.752(b)(2) at each MSW landfill meeting the conditions in 23.1(5)“a”(3)“1.”

3. MSW landfill emissions collected through the use of control devices must meet the following requirements, except as provided in 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency.

An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18; a control system designed and operated to reduce NMOC by 98 weight percent; or an enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

(4) Test methods and procedures. The following must be used:

1. The calculation of the landfill NMOC emission rate listed in 40 CFR 60.754, as applicable, to determine whether the landfill meets the condition in 23.1(5)“a”(3)“3”;

2. The operational standards in 40 CFR 60.753;

3. The compliance provisions in 40 CFR 60.755; and

4. The monitoring provisions in 40 CFR 60.756.

(5) Reporting and record-keeping requirements. The record-keeping and reporting provisions listed in 40 CFR 60.757 and 60.758, as applicable, except as provided under 40 CFR 60.24 after approval by the Director and U.S. Environmental Protection Agency, shall be used.

(6) Compliance times.

1. Except as provided for under 23.1(5)“a”(6)“2,” planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under 23.1(5)“a”(3) shall be accomplished within 30 months after

the date the initial NMOC emission rate report shows NMOC emissions greater than or equal to 50 megagrams per year.

2. For each existing MSW landfill meeting the conditions in 23.1(5)“a”(3)“1” whose NMOC emission rate is less than 50 megagrams per year on August 20, 1997, installation of collection and control systems capable of meeting emission guidelines in 23.1(5)“a”(3) shall be accomplished within 30 months of the date when the condition in 23.1(5)“a”(3)“1” is met (i.e., the date of the first annual nonmethane organic compounds emission rate which equals or exceeds 50 megagrams per year).

b. Emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce). This paragraph contains emission guidelines and compliance times for the control of certain designated pollutants from hospital/medical/infectious waste incinerator(s) (HMIWI) in accordance with Subparts Ce and Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators) of 40 CFR Part 60.*

*As of November 24, 2010, the emission guidelines for hospital/medical/infectious waste incinerators (Subpart Ce) are rescinded.

c. Emission guidelines and compliance schedules for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999. Emission guidelines and compliance schedules for the control of designated pollutants from affected commercial and industrial solid waste incinerators that commenced construction on or before November 30, 1999, shall be in accordance with federal plan requirements established in Subpart III of 40 CFR Part 62.

d. Emission guidelines for mercury for coal-fired electric utility steam generating units. Rescinded IAB 10/7/09, effective 11/11/09.

23.1(6) Calculation of emission limitations based upon stack height. This rule sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. The rule does not limit the actual physical stack height for any source.

For the purpose of this subrule, definitions of “stack,” “a stack in existence,” “dispersion technique,” “nearby” and “excessive concentration” as set forth in 40 CFR §§ 51.100(ff) through (hh), (jj) and (kk) as amended through June 14, 1996, are adopted by reference.

a. “Good engineering practice (GEP) stack height” means the greater of:

- (1) Sixty-five meters, measured from the ground level elevation at the base of the stack; or
- (2) For stacks in existence on January 12, 1979, and for which the owner and operator had obtained all applicable permits or approvals required under 567—Chapter 22 and 40 CFR § 52.21 as amended through June 13, 2007,

$$H_g = 2.5H$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

For all other stacks,

$$H_g = H + 1.5L$$

where:

H_g = good engineering practice stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), provided that the department may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the department, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features. Public notification of the availability of such study and opportunity for public hearing are required prior to approval by the department.

b. The degree of emission limitation required for control of any air contaminant under this chapter shall not be affected in any manner by:

- (1) The consideration of that portion of a stack which exceeds GEP stack height; or

(2) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(3) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combined exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase gas plume rise.

This rule is intended to implement Iowa Code section 455B.133.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 7623B, IAB 3/11/09, effective 4/15/09; ARC 8216B, IAB 10/7/09, effective 11/11/09; ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 9154B, IAB 10/20/10, effective 11/24/10 (See Delay note at end of chapter) (See Rescission note at end of chapter); ARC 0329C, IAB 9/19/12, effective 10/24/12; ARC 1014C, IAB 9/18/13, effective 10/23/13; ARC 1561C, IAB 8/6/14, effective 9/10/14]

567—23.2(455B) Open burning.

23.2(1) Prohibition. No person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3).

23.2(2) Variances from rules. Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance from the open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard (NAAQS).

23.2(3) Exemptions. The open burning exemptions specified in this subrule shall not be construed as exemptions from any other applicable environmental regulations. In particular, the exemptions contained in this subrule do not absolve any person from compliance with the rules for solid waste disposal, including ash disposal, and solid waste permitting contained in 567—Chapters 100 through 130 or the rules for storm water runoff and storm water permitting contained in 567—Chapters 60 and 64. The following shall be permitted unless prohibited by local ordinances or regulations.

a. Disaster rubbish. The open burning of rubbish, including landscape waste, for the duration of the community disaster period in cases where an officially declared emergency condition exists. Burning of any structures or demolished structures shall be conducted in accordance with 40 CFR Section 61.145 as amended through January 16, 1991, which is the “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants.

b. Trees and tree trimmings. The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be used to ignite trees and tree trimmings.

This exemption shall not apply within the area classified as the PM10 (inhalable) particulate Group II area of Mason City. This Group II area is described as follows: the area in Cerro Gordo County, Iowa, in Lincoln Township including Sections 13, 24 and 25; in Lime Creek Township including Sections 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, 33, 34 and 35; in Mason Township the W ½ of Section 1, Sections 2, 3, 4, 5, 8, 9, the N ½ of Section 11, the NW ¼ of Section 12, the N ½ of Section 16, the N ½ of Section 17 and the portions of Sections 10 and 15 north and west of the line from U.S. Highway 18 south on Kentucky Avenue to 9th Street SE; thence west on 9th Street SE to the Minneapolis and St. Louis railroad tracks; thence south on Minneapolis and St. Louis railroad tracks to 19th Street SE; thence west on 19th Street SE to the section line between Sections 15 and 16.

c. *Flare stacks.* The open burning or flaring of waste gases, providing such open burning or flaring is conducted in compliance with 23.3(2) “d” and 23.3(3) “e.”

d. *Landscape waste.* The disposal by open burning of landscape waste originating on the premises. However, the burning of landscape waste produced in clearing, grubbing and construction operations shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning. Rubber tires shall not be used to ignite landscape waste.

e. *Recreational fires.* Open fires for cooking, heating, recreation and ceremonies, provided they comply with 23.3(2) “d.” Burning rubber tires is prohibited from this activity.

f. *Residential waste.* Backyard burning of residential waste at dwellings of four-family units or less. The adoption of more restrictive ordinances or regulations of a governing body of the political subdivision, relating to control of backyard burning, shall not be precluded by these rules.

g. *Training fires.* For purposes of subrule 23.2(3), a “training fire” is a fire set for the purposes of conducting bona fide training of public or industrial employees in firefighting methods. For purposes of this paragraph, “bona fide training” means training that is conducted according to the National Fire Protection Association 1403 Standard of Live Fire Training Evolutions (2002 Edition) or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

(1) A training fire on a building is conducted with the building structurally intact.

(2) The training fire does not include the controlled burn of a demolished building.

(3) If the training fire is to be conducted on a building, written notification is provided to the department on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building, and is postmarked or delivered to the director at least ten working days before such action commences.

(4) Notification shall be made in accordance with 40 CFR Section 61.145, “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.

(5) All asbestos-containing materials shall be removed prior to the training fire.

(6) Asphalt roofing may be burned in the training fire only if notification to the director contains testing results indicating that none of the layers of asphalt roofing contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department’s limit on the burning of asphalt roofing shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3) “j.”

(7) Rubber tires shall not be burned during a training fire.

h. *Paper or plastic pesticide containers and seed corn bags.* The disposal by open burning of paper or plastic pesticide containers (except those formerly containing organic forms of beryllium, selenium, mercury, lead, cadmium or arsenic) and seed corn bags resulting from farming activities occurring on the premises. Such open burning shall be limited to areas located at least one-fourth mile from any building inhabited by other than the landowner or tenant conducting the open burning, livestock area, wildlife area, or water source. The amount of paper or plastic pesticide containers and seed corn bags that can be disposed of by open burning shall not exceed one day’s accumulation or 50 pounds, whichever is less. However, when the burning of paper or plastic pesticide containers or seed corn bags causes a nuisance, the director may take action to secure relocation of the burning operation. Since the concentration levels of pesticide combustion products near the fire may be hazardous, the person conducting the open burning should take precautions to avoid inhalation of the pesticide combustion products.

i. *Agricultural structures.* The open burning of agricultural structures, provided that the open burning occurs on the premises and, for agricultural structures located within a city or town, at least one-fourth mile from any building inhabited by a person other than the landowner, a tenant, or an employee of the landowner or tenant conducting the open burning unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department prior to the open burning;

all chemicals and asphalt roofing are removed; burning is conducted only when weather conditions are favorable with respect to surrounding property; and permission from the local fire chief is secured in advance of the burning. Rubber tires shall not be used to ignite agricultural structures. The asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991, requires the burning of agricultural structures to be conducted in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation."

For the purposes of this subrule, "agricultural structures" means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. "Agricultural structures," for asbestos NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes.

j. Controlled burning of a demolished building. A city, as "city" is defined in Iowa Code section 362.2(4), with approval of its council, as "council" is defined in Iowa Code section 362.2(8), may conduct a controlled burn of a demolished building. A city is the only party that may conduct such a burn and is responsible for ensuring that all of the following conditions are met:

(1) *Prohibition.* The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area where area-specific state implementation plans require the control of particulate matter.

(2) *Notification requirements.* For each building proposed to be burned, the city fire department or a city official, on behalf of the city, shall submit to the department a completed notification postmarked at least 10 working days prior to commencing demolition and at least 30 days before the proposed controlled burn commences. Documentation of city council approval shall be submitted with the notification. Information required to be provided shall include: the exact location of the burn site; the approximate distance to the nearest neighboring residence or business; the method used by the city to notify nearby residents of the proposed burn; an explanation of why alternative methods of demolition debris management are not being used; and information required by 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991. Notification shall be provided on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building. For burns conducted outside the city limits, the city shall send to the chairperson of the applicable county board a copy of the completed DNR notification form 542-8010 and documentation of city council approval. Notification to the county board shall be postmarked, faxed or sent by electronic mail at least 30 days before the proposed controlled burn commences.

(3) *Asbestos removal requirements.* All asbestos-containing materials shall be removed before the building to be burned is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145, "Standard for Demolition and Renovation" of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.

(4) *Requirements for asphalt roofing.* During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city's limit on the burning of asphalt roofing shall include both the controlled burning of a demolished building and training fires, as specified in paragraph 23.2(3)"g."

(5) *Building size limit.* For each proposed controlled burn located within the city limits, more than one demolished building may be included in the burn, provided that the sum total of all building material to be burned at a designated site does not exceed 1700 square feet in size. For a controlled burn site located outside the city limits, the sum total of all building material to be burned, per day, may not exceed 1700 square feet in size. For purposes of this subparagraph, "square feet" includes both finished and unfinished basements and excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

(6) *Time of day requirements.* The controlled burning of a demolished building may be conducted only between the hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

(7) *Prohibited materials.* Rubber tires, chemicals, furniture, carpeting, household appliances, vinyl products (such as flooring or siding), trade waste, garbage, rubbish, landscape waste, residential waste, and other nonstructural materials shall not be burned.

(8) *Limits on the number and location of burns.* For burns conducted within the city limits, each city may undertake no more than one controlled burn of demolished building material in every 0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city shall undertake no more than one controlled burn of demolished building material per day. A burn site outside the city limits must be located at least 0.6 of a mile from any building inhabited by a person, as “person” is defined in Iowa Code section 362.2(17).

(9) *Requirements for burn access and supervision.* The city shall control access to all demolished building burn sites. Representatives of the city who are city employees or who are hired by the city shall supervise the burning of demolished building material at all times.

(10) *Record-keeping requirements.* The city shall retain at least one copy of all notifications and supplementary information required to be sent to the department under subparagraph (2). Additionally, the city shall maintain a map of the exact location of each burn site, and supporting documentation showing the date of each demolished building burn and the square feet of building material burned on each date. All maps, notifications and associated records shall be maintained by the city clerk, as “clerk” is defined in Iowa Code section 362.2(7), for a period of at least three years and shall be made available for inspection by the department upon request.

(11) *Variance from this paragraph.* In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from the specific conditions for controlled burning of a demolished building and may request that the director conduct a review of the ambient air impacts of the request. The director shall approve or deny the request in accordance with 567—subrule 21.2(4).

(12) *Compliance with other applicable environmental regulations.* Compliance with the exemption requirements in this paragraph shall not absolve a city of the responsibility to comply with any other applicable environmental regulations. In particular, a city conducting a controlled burn of a demolished building shall comply with all applicable solid waste disposal, including ash disposal, and solid waste permitting rules contained in 567—Chapters 100 through 130, as well as all applicable storm water discharge and storm water permitting rules contained in 567—Chapters 60 and 64.

23.2(4) Unavailability of exemptions in certain areas. Notwithstanding 23.2(2) and 23.2(3) “b,” “d,” “f,” and “i,” no person shall allow, cause or permit the open burning of trees or tree trimmings, residential or landscape waste or agricultural structures in the cities of: Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

This rule is intended to implement Iowa Code section 455B.133.

567—23.3(455B) Specific contaminants.

23.3(1) General. The emission standards contained in this rule shall apply to each source operation unless a specific emission standard for the process involved is prescribed elsewhere in this chapter, in which case the specific standard shall apply.

23.3(2) Particulate matter. No person shall cause or allow the emission of particulate matter from any source in excess of the emission standards specified in this chapter, except as provided in 567—Chapter 24.

a. General emission rate.

(1) For sources constructed, modified or reconstructed on or after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot (dscf) of exhaust gas, except as provided in 567—21.2(455B), 23.1(455B), 23.4(455B), and 567—Chapter 24.

(2) For sources constructed, modified or reconstructed prior to July 21, 1999, the emission of particulate matter from any process shall not exceed the amount determined from Table I, or amount specified in a permit if based on an emission standard of 0.1 grain per standard cubic foot of exhaust gas, or established from standards provided in 23.1(455B) and 23.4(455B).

TABLE I
ALLOWABLE RATE OF EMISSION BASED ON PROCESS WEIGHT RATE*

Process Weight Rate		Emission Rate	Process Weight Rate		Emission Rate
Lb/Hr	Tons/Hr	Lb/Hr	Lb/Hr	Tons/Hr	Lb/Hr
100	0.05	0.55	16,000	8.00	16.5
200	0.10	0.88	18,000	9.00	17.9
400	0.20	1.40	20,000	10.00	19.2
600	0.30	1.83	30,000	15.00	25.2
800	0.40	2.22	40,000	20.00	30.5
1,000	0.50	2.58	50,000	25.00	35.4
1,500	0.75	3.38	60,000	30.00	40.0
2,000	1.00	4.10	70,000	35.00	41.3
2,500	1.25	4.76	80,000	40.00	42.5
3,000	1.50	5.38	90,000	45.00	43.6
3,500	1.75	5.96	100,000	50.00	44.6
4,000	2.00	6.52	120,000	60.00	46.3
5,000	2.50	7.58	140,000	70.00	47.8
6,000	3.00	8.56	160,000	80.00	49.0
7,000	3.50	9.49	200,000	100.00	51.2
8,000	4.00	10.4	1,000,000	500.00	69.0
9,000	4.50	11.2	2,000,000	1,000.00	77.6
10,000	5.00	12.0	6,000,000	3,000.00	92.7
12,000	6.00	13.6			

*Interpolation of the data in this table for process weight rates up to 60,000 lb/hr shall be accomplished by the use of the equation

$$E=4.10 P^{0.67},$$

and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation

$$E=55.0 P^{0.11}-40,$$

where E = rate of emission in lb/hr, and

P = process weight in tons/hr

b. Combustion for indirect heating. Emissions of particulate matter from the combustion of fuel for indirect heating or for power generation shall be limited by the ASME Standard APS-1, Second Edition, November, 1968, "Recommended Guide for the Control of Dust Emission—Combustion for Indirect Heat Exchangers." For the purpose of this paragraph, the allowable emissions shall be calculated from equation (15) in that standard, with $\text{Comax}^2=50$ micrograms per cubic meter. Allowable emissions from a single stack may be estimated from Figure 1. The maximum ground level dust concentrations designated are above the background level. For plants with 4,000 million Btu/hour input or more, the "a" factor shall be 1.0. In plants with less than 4,000 million Btu/hour input, appropriate "a" factors, less than 1.0, shall be applied. Pertinent correction factors, as specified in the standard, shall be applied for installations with multiple stacks. However, for fuel-burning units in operation on January 13, 1976, the maximum allowable emissions calculated under APS-1 for the facility's equipment configuration on

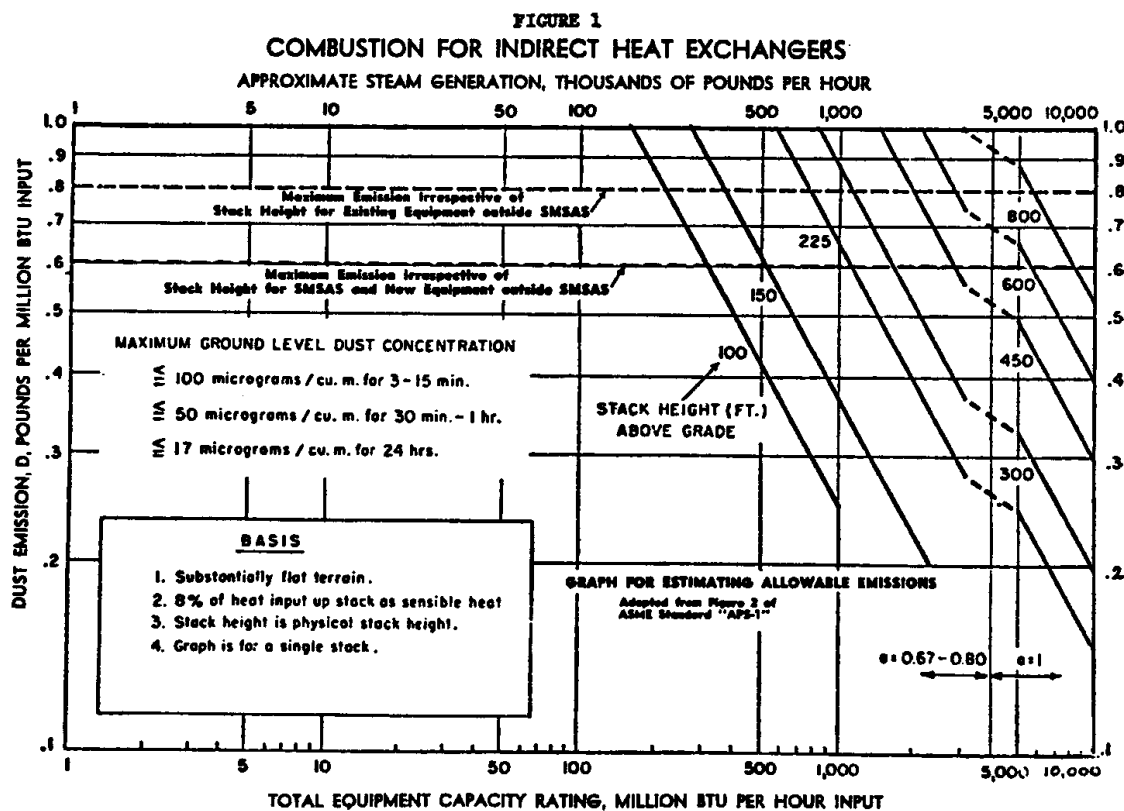
January 13, 1976, shall not be increased even if the changes in the equipment or stack configuration would otherwise allow a recalculation and a higher maximum allowable emission under APS-1.

(1) Outside any standard metropolitan statistical area, the maximum allowable emissions from each stack, irrespective of stack height, shall be 0.8 pounds of particulates per million Btu input.

(2) Inside any standard metropolitan statistical area, the maximum allowable emission from each stack, irrespective of stack height, shall be 0.6 pounds of particulates per million Btu input.

(3) For a new fossil fuel-fired steam generating unit of more than 250 million Btu per hour heat input, 23.1(2) "a" shall apply. For a new unit of between 150 million and 250 million (inclusive) Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.2 pounds of particulates per million Btu of heat input. For a new unit of less than 150 million Btu per hour heat input, the maximum allowable emissions from such new unit shall be 0.6 pounds of particulates per million Btu of heat input.

(4) Measurements of emissions from a particulate source will be made in accordance with the provisions of 567—Chapter 25.



(5) For fuel-burning sources in operation prior to July 29, 1977, which are not subject to 23.1(2) and which significantly impact a primary or secondary particulate standard nonattainment area, the emission limitations specified in this subparagraph apply. A significant impact shall be equal to or exceeding 5 micrograms of particulate matter per cubic meter of air (24-hour average) or 1 microgram of particulate matter per cubic meter of air (annual average) determined by an EPA approved single source dispersion model using allowable emission rates and five-year worst case meteorological conditions. In the case where two or more boilers discharge into a common stack, the applicable stack emission limitation shall be based upon the heat input of the largest operating boiler. The plantwide allowable emission limitation shall be the weighted average of the allowable emission limitations for each stack or the applicable APS-1 plantwide standard as determined under paragraph 23.3(2) "b," whichever is more stringent.

The maximum allowable emission rate for a single stack with a total heat input capacity less than 250 million Btu per hour shall be 0.60 pound of particulate matter per million Btu heat input; the maximum

allowable emission rate for a single stack with a total heat input capacity greater than or equal to 250 million Btu per hour and less than 500 million Btu per hour shall be 0.40 pound of particulate matter per million Btu heat input; the maximum allowable emission rate for a single stack with a total heat input capacity greater than or equal to 500 million Btu per hour shall be 0.30 pound of particulate matter per million Btu heat input; except that the maximum allowable emission rate for the stack serving Unit #1 of Iowa Public Service at Port Neal shall be 0.50 pound of particulate matter per million Btu heat input.

All sources regulated under this subparagraph shall demonstrate compliance by October 1, 1981; however, a source is considered to be in compliance with this subparagraph if by October 1, 1981, it is on a compliance schedule to be completed as expeditiously as possible, but no later than December 31, 1982.

c. Fugitive dust.

(1) Attainment and unclassified areas. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface. All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions which require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.

1. Use, where practical, of water or chemicals for control of dusts in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land.

2. Application of suitable materials, such as but not limited to asphalt, oil, water or chemicals on unpaved roads, material stockpiles, race tracks and other surfaces which can give rise to airborne dusts.

3. Installation and use of containment or control equipment, to enclose or otherwise limit the emissions resulting from the handling and transfer of dusty materials, such as but not limited to grain, fertilizer or limestone.

4. Covering, at all times when in motion, open-bodied vehicles transporting materials likely to give rise to airborne dusts.

5. Prompt removal of earth or other material from paved streets or to which earth or other material has been transported by trucking or earth-moving equipment, erosion by water or other means.

6. Reducing the speed of vehicles traveling over on-property surfaces as necessary to minimize the generation of airborne dusts.

(2) Nonattainment areas. Subparagraph (1) notwithstanding, no person shall allow, cause or permit any visible emission of fugitive dust in a nonattainment area for particulate matter to go beyond the lot line of the property on which a traditional source is located without taking reasonable precautions to prevent emission. Traditional source means a source category for which a particulate emission standard has been established in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 23.4(455B) and includes a quarry operation, haul road or parking lot associated with a traditional source. This paragraph does not modify the emission standard stated in 23.1(2), 23.3(2) "a," 23.3(2) "b" or 23.4(455B), but rather establishes a separate requirement for fugitive dust from such sources. For guidance on the types of controls which may constitute reasonable precautions, see "Identification of Techniques for the Control of Industrial Fugitive Dust Emissions," [available from the department] adopted by the commission on May 19, 1981.

(3) Reclassified areas. Reasonable precautions implemented pursuant to the nonattainment area provisions of subparagraph (2) shall remain in effect if the nonattainment area is redesignated to either attainment or unclassified after March 6, 1980.

d. Visible emissions. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity or that level specified in a construction permit, except as provided below and in 567—Chapter 24.

(1) *Residential heating equipment.* Residential heating equipment serving dwellings of four family units or less is exempt.

(2) *Gasoline-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from gasoline-powered motor vehicles for longer than five consecutive seconds.

(3) *Diesel-powered vehicles.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered motor vehicles in excess of 40 percent opacity, for longer than five consecutive seconds.

(4) *Diesel-powered locomotives.* No person shall allow, cause or permit the emission of visible air contaminants from diesel-powered locomotives in excess of 40 percent opacity, except for a maximum period of 40 consecutive seconds during acceleration under load, or for a period of four consecutive minutes when a locomotive is loaded after a period of idling.

(5) *Startup and testing.* Initial start and warmup of a cold engine, the testing of an engine for trouble, diagnosis or repair, or engine research and development activities, is exempt.

(6) *Uncombined water.* The provisions of this paragraph shall apply to any emission which would be in violation of these provisions except for the presence of uncombined water, such as condensed water vapor.

23.3(3) Sulfur compounds. The provisions of this subrule shall apply to any installation from which sulfur compounds are emitted into the atmosphere.

a. Sulfur dioxide from use of solid fuels.

(1) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the following counties: Black Hawk, Clinton, Des Moines, Dubuque, Jackson, Lee, Linn, Lousia, Muscatine and Scott.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from an existing solid fuel-burning unit, (i.e., a unit which was in operation or for which components had been purchased, or which was under construction prior to September 23, 1970), in an amount greater than 5 pounds, replicated maximum three-hour average, per million Btu of heat input if such unit is located within the remaining 89 counties of the state not listed in subparagraph 23.3(3) “a”(1).

(3) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere from any new solid fuel-burning unit (i.e., a unit which was not in operation or for which components had not been purchased, or which was not under construction prior to September 23, 1970) which has a capacity of 250 million Btu or less per hour heat input, in an amount greater than 6 pounds, replicated maximum three-hour average, per million Btu of heat input.

(4) Subparagraphs (1) through (3) notwithstanding, a fossil fuel-fired steam generator to which 23.1(2) “a,” 23.1(2) “z” or 23.1(2) “ccc” applies shall comply with 23.1(2) “a,” 23.1(2) “z” or 23.1(2) “ccc,” respectively.

b. Sulfur dioxide from use of liquid fuels.

(1) No person shall allow, cause, or permit the combustion of number 1 or number 2 fuel oil exceeding a sulfur content of 0.5 percent by weight.

(2) No person shall allow, cause, or permit the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum three-hour average, per million Btu of heat input from a liquid fuel-burning unit.

(3) Notwithstanding this paragraph, a fossil fuel-fired steam generator to which 23.1(2) “a,” 23.1(2) “z” or 23.1(2) “ccc” applies shall comply with 23.1(2) “a,” 23.1(2) “z” or 23.1(2) “ccc.”

c. Sulfur dioxide from sulfuric acid manufacture. After January 1, 1975, no person shall allow, cause or permit the emission of sulfur dioxide from an existing sulfuric acid manufacturing plant in excess of 30 pounds of sulfur dioxide, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

d. Acid mist from sulfuric acid manufacture. After January 1, 1974, no person shall allow, cause or permit the emission of acid mist calculated as sulfuric acid from an existing sulfuric acid manufacturing plant in excess of 0.5 pounds, maximum three-hour average, per ton of product calculated as 100 percent sulfuric acid.

e. Other processes capable of emitting sulfur dioxide. After January 1, 1974, no person shall allow, cause or permit the emission of sulfur dioxide from any process, other than sulfuric acid manufacture, in excess of 500 parts per million, based on volume. This paragraph shall not apply to devices which have been installed for air pollution abatement purposes where it is demonstrated by the owner of the source that the ambient air quality standards are not being exceeded.

This rule is intended to implement Iowa Code section 455B.133.

567—23.4(455B) Specific processes.

23.4(1) General. The provisions of this rule shall not apply to those facilities for which performance standards are specified in 23.1(2). The emission standards specified in this rule shall apply and those specified in 23.3(2) “a” and 23.3(2) “b” shall not apply to each process of the types listed in the following subrules, except as provided below.

EXCEPTION: Whenever the director determines that a process complying with the emission standard prescribed in this section is causing or will cause air pollution in a specific area of the state, the specific emission standard may be suspended and compliance with the provisions of 23.3(455B) may be required in such instance.

23.4(2) Asphalt batching plants. No person shall cause, allow or permit the operation of an asphalt batching plant in a manner such that the particulate matter discharged to the atmosphere exceeds 0.15 grain per standard cubic foot of exhaust gas.

23.4(3) Cement kilns. Cement kilns shall be equipped with air pollution control devices to reduce the particulate matter in the gas discharged to the atmosphere to no more than 0.3 percent of the particulate matter entering the air pollution control device. Regardless of the degree of efficiency of the air pollution control device, particulate matter discharged from such kilns shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(4) Cupolas for metallurgical melting. The emissions of particulate matter from all new foundry cupolas, and from all existing foundry cupolas with a process weight rate in excess of 20,000 pounds per hour, shall not exceed the amount specified in paragraph 23.3(2) “a,” except as provided in 567—Chapter 24.

The emissions of particulate matter from all existing foundry cupolas with a process weight rate less than or equal to 20,000 pounds per hour shall not exceed the amount determined from Table II of these rules, except as provided in 567—Chapter 24.

TABLE II
ALLOWABLE EMISSIONS FROM
EXISTING SMALL FOUNDRY CUPOLAS

Process weight rate (lb/hr)	Allowable emission (lb/hr)
1,000	3.05
2,000	4.70
3,000	6.35
4,000	8.00
5,000	9.58
6,000	11.30
7,000	12.90
8,000	14.30
9,000	15.50
10,000	16.65
12,000	18.70
16,000	21.60
18,000	23.40
20,000	25.10

23.4(5) *Electric furnaces for metallurgical melting.* The emissions of particulate matter to the atmosphere from electric furnaces used for metallurgical melting shall not exceed 0.1 grain per standard cubic foot of exhaust gas.

23.4(6) *Sand handling and surface finishing operations in metal processing.* This subrule shall apply to any new foundry or metal processing operation not properly termed a combustion, melting, baking or pouring operation. For purposes of this subrule, a new process is any process which has not started operation, or the construction of which has not been commenced, or the components of which have not been ordered or contracts for the construction of which have not been let on August 1, 1977. No person shall allow, cause or permit the operation of any equipment designed for sand shakeout, mulling, molding, cleaning, preparation, reclamation or rejuvenation or any equipment for abrasive cleaning, shot blasting, grinding, cutting, sawing or buffing in such a manner that particulate matter discharged from any stack exceeds 0.05 grains per dry standard cubic foot of exhaust gas, regardless of the types and number of operations that discharge from the stack.

23.4(7) *Grain handling and processing plants.* The owner or operator of equipment at a permanent installation for the handling or processing of grain, grain products and grain by-products shall not cause, allow or permit the particulate matter discharged to the atmosphere to exceed 0.1 grain per dry standard cubic foot of exhaust gas, except as follows:

a. The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as “country grain elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

b. The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator” is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

c. The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as “country grain terminal elevator” is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as “grain terminal elevator”

is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.

23.4(8) *Lime kilns.* No person shall cause, allow or permit the operation of a kiln for the processing of limestone such that the particulate matter in the gas discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(9) *Meat smokehouses.* No person shall cause, allow or permit the operation of a meat smokehouse or a group of meat smokehouses, which consume more than ten pounds of wood, sawdust or other material per hour such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas.

23.4(10) *Phosphate processing plants.*

a. Phosphoric acid manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of phosphoric acid that was in existence on October 22, 1974, in a manner that produces more than 0.04 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

b. Diammonium phosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of diammonium phosphate that was in existence on October 22, 1974, in a manner that produces more than 0.15 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

c. Nitrophosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of nitrophosphate in a manner that produces more than 0.06 pound of fluoride per ton of phosphorus pentoxide or equivalent input.

d. No person shall allow, cause or permit the operation of equipment for the processing of phosphate ore, rock or other phosphatic material (other than equipment used for the manufacture of phosphoric acid, diammonium phosphate or nitrophosphate) in a manner that the unit emissions of fluoride exceed 0.4 pound of fluoride per ton of phosphorous pentoxide or its equivalent input.

e. Notwithstanding “a” through “d,” no person shall allow, cause or permit the operation of equipment for the processing of phosphorous ore, rock or other phosphatic material including, but not limited to, phosphoric acid, in a manner that emissions of fluorides exceed 100 pounds per day.

f. “Fluoride” means elemental fluorine and all fluoride compounds as measured by reference methods specified in Appendix A to 40 CFR Part 60 as amended through March 12, 1996.

g. Calculation. The allowable total emission of fluoride shall be calculated by multiplying the unit emission specified above by the expressed design production capacity of the process equipment.

23.4(11) *Portland cement concrete batching plants.* No person shall cause, allow or permit the operation of a Portland cement concrete batching plant such that the particulate matter discharged to the atmosphere exceeds 0.1 grain per standard cubic foot of exhaust gas.

23.4(12) *Incinerators.* A person shall not cause, allow or permit the operation of an incinerator unless provided with appropriate control of emissions of particulate matter and visible air contaminants.

a. *Particulate matter.* A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of 1000 or more pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.2 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

A person shall not cause, allow or permit the operation of an incinerator with a rated refuse burning capacity of less than 1000 pounds per hour in a manner such that the particulate matter discharged to the atmosphere exceeds 0.35 grain per standard cubic foot of exhaust gas adjusted to 12 percent carbon dioxide.

b. *Visible emissions.* A person shall not allow, cause or permit the operation of an incinerator in a manner such that it produces visible air contaminants in excess of 40 percent opacity; except that visible air contaminants in excess of 40 percent opacity but less than or equal to 60 percent opacity may be emitted for periods aggregating not more than 3 minutes in any 60-minute period during an operation breakdown or during the cleaning of air pollution control equipment.

23.4(13) *Painting and surface-coating operations.* No person shall allow, cause or permit painting and surface-coating operations in a manner such that particulate matter in the gas discharge exceeds 0.01 grain per standard cubic foot of exhaust gas.

This rule is intended to implement Iowa Code section 455B.133.

567—23.5(455B) Anaerobic lagoons.

23.5(1) Applications for construction permits for animal feeding operations using anaerobic lagoons shall meet the requirements of rules 567—65.9(455B) and 65.15(455B) to 65.17(455B).

23.5(2) Criteria for approval of industrial anaerobic lagoons.

a. Lagoons designed to treat 100,000 gpd or less.

(1) The sulfate content of the water supply shall not exceed 250 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

b. Lagoons designed to treat more than 100,000 gpd.

(1) The sulfate content of the water supply shall not exceed 100 mg/l. However, this paragraph does not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

(2) The design loading rate for the total lagoon volume shall not be less than 10 pounds nor more than 20 pounds of biochemical oxygen demand (five day) per thousand cubic feet per day.

This rule is intended to implement Iowa Code section 455B.133.

567—23.6(455B) Alternative emission limits (the “bubble concept”). Emission limits for individual emission points included in 23.3(455B) (except 23.3(2)“*d*,” 23.3(2)“*b*”(3), and 23.3(3)“*a*”(3)) and 23.4(455B) (except 23.4(12)“*b*” and 23.4(6)) may be replaced by alternative emission limits. The alternative emission limits must be consistent with 567—22.7(455B) and 567—subrule 25.1(12). Under this rule, less stringent control limits where costs of emission control are high may be allowed in exchange for more stringent control limits where costs of control are less expensive.

Rules 23.3(455B) to 23.6(455B) are intended to implement Iowa Code section 455B.133.

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⁰ Two or more ARCs

¹ Objection, see filed rule [DEQ, 4.2(4)] published IAC Supp. 1/22/77, 3/9/77.

² Effective date of 23.2(4) delayed 70 days by the Administrative Rules Review Committee on 9/14/83.

³ 11/24/10 effective date of 23.1(4), introductory paragraph, and 23.1(4) “*ev*” and “*fa*” to “*fd*” delayed 70 days by the Administrative Rules Review Committee at its meeting held November 9, 2010.

⁴ Amendment to 23.1(4), introductory paragraph, (ARC 9154B, Item 4) rescinded by Executive Order Number 72 on 4/4/11. Amendment removed and prior language restored IAC Supplement 4/20/11.

CHAPTER 106
DEER HUNTING BY RESIDENTS
[Prior to 12/31/86, Conservation Commission[290] Ch 106]

571—106.1(481A) Licenses. When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person. No one who is issued a deer hunting license and transportation tag shall allow another person to use or possess that license or transportation tag while that person is deer hunting or tagging a deer.

106.1(1) Type of license.

a. General deer licenses. General deer licenses shall be valid for taking deer in one season selected at the time the license is purchased. General deer licenses shall be valid for taking deer of either sex except in Buena Vista, Calhoun, Cerro Gordo, Cherokee, Clay, Dickinson, Emmet, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Ida, Kossuth, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, Webster, Winnebago, Worth and Wright counties during the early muzzleloader or first regular gun season when the general deer license will be valid for taking deer with at least one forked antler. Paid general deer licenses shall be valid statewide except where prohibited in deer population management zones established under 571—Chapter 105. Free general deer licenses shall be valid for taking deer of either sex only on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

b. Antlerless-deer-only licenses. Antlerless-deer-only licenses shall be valid for taking deer that have no forked antler. Paid antlerless-deer-only licenses shall be valid in one county or in one deer population management zone and in one season as selected at the time the license is purchased. Free and reduced-fee antlerless-deer-only licenses shall be valid on the farm unit of an eligible landowner or tenant in the season or seasons selected at the time the license is obtained.

106.1(2) Bow season licenses. General deer and antlerless-deer-only licenses, paid or free, shall be valid in both segments of the bow season.

106.1(3) Regular gun season licenses. Paid general deer and antlerless-deer-only licenses shall be valid in either the first or the second regular gun season, as designated on the license. Free general deer licenses and antlerless-deer-only licenses shall be valid in both the first and second regular gun seasons.

106.1(4) Muzzleloader season licenses. General deer and antlerless-deer-only licenses, paid or free, shall be valid in either the early or the late muzzleloader season, as designated on the license.

106.1(5) November antlerless-deer-only licenses. Rescinded IAB 7/11/12, effective 8/15/12.

106.1(6) January antlerless-deer-only licenses. Rescinded IAB 8/6/14, effective 9/10/14.

106.1(7) Free and reduced-fee deer licenses for landowners and tenants. A maximum of one free general deer license, two free antlerless-deer-only licenses, and two reduced-fee antlerless-deer-only licenses may be issued to a qualifying landowner or eligible family member and a qualifying tenant or eligible family member. Eligibility for licenses is described in 571—106.12(481A). The free general deer license shall be available for one of the following seasons: the youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. One free antlerless-deer-only license shall be available for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, or first and second regular gun seasons. The second free antlerless-deer-only license shall be valid only for the January antlerless-deer-only season and will be available only if a portion of the farm unit lies within a county where paid antlerless-deer-only licenses are available during that season. Each reduced-fee antlerless-deer-only license shall be valid for one of the following seasons: youth/disabled hunter season (if eligible), bow season, early muzzleloader season, late muzzleloader season, first and second regular gun seasons, or January antlerless-deer-only season. January antlerless-deer-only licenses will be available only if a portion of the farm unit is located in a county where paid antlerless-deer-only licenses are available in that season.

106.1(8) Antlerless-deer-only crossbow licenses for senior citizens. Persons 70 years old or older may obtain one paid antlerless-deer-only license valid statewide for taking antlerless deer with a crossbow. The license will be valid only during the bow season.

106.1(9) Nonambulatory deer hunting licenses. The commission shall issue licenses in conformance with 2009 Iowa Acts, Senate File 187. A person applying for this license must provide a completed form obtained from the department of natural resources. The application shall be certified by the applicant's attending physician with an original signature and declare that the applicant is nonambulatory using the criteria listed in 2009 Iowa Acts, Senate File 187. A medical statement from the applicant's attending physician that specifies criteria met shall be on 8½" × 11" letterhead stationery. The attending physician shall be a currently practicing doctor of medicine, doctor of osteopathy, physician assistant or nurse practitioner.

[ARC 7921B, IAB 7/1/09, effective 8/5/09; ARC 8255B, IAB 11/4/09, effective 12/9/09; ARC 8888B, IAB 6/30/10, effective 8/18/10; ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14]

571—106.2(481A) Season dates. Deer may be taken only during the following seasons:

106.2(1) Bow season. Deer may be taken in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year.

106.2(2) Regular gun seasons. Deer may be taken in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

106.2(3) Muzzleloader seasons. Deer may be taken in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

106.2(4) November antlerless-deer-only season. Rescinded IAB 7/11/12, effective 8/15/12.

106.2(5) January antlerless-deer-only season. Rescinded IAB 8/6/14, effective 9/10/14.

[ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14]

571—106.3(481A) Shooting hours. Legal shooting hours shall be from one-half hour before sunrise to one-half hour after sunset in all seasons.

571—106.4(481A) Limits.

106.4(1) Bow season. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.4(2) Muzzleloader seasons. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.4(3) Regular gun seasons. The bag limit is one deer for each hunter in the party who has a valid deer transportation tag. The possession limit is one deer per license. "Possession" shall mean that the deer is in the possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(4) November antlerless-deer-only season. Rescinded IAB 7/11/12, effective 8/15/12.

106.4(5) January antlerless-deer-only season. Rescinded IAB 8/6/14, effective 9/10/14.

106.4(6) Maximum annual possession limit. The maximum annual possession limit for a resident deer hunter is one deer for each legal license and transportation tag obtained.

[ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14]

571—106.5(481A) Areas closed to hunting. There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth

County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

571—106.6(481A) Paid deer license quotas and restrictions. Paid deer licenses, including antlerless-deer-only licenses, will be restricted in the type and number that may be purchased.

106.6(1) Paid general deer licenses. Residents may purchase no more than two paid general deer licenses, one for the bow season and one for one of the following seasons: early muzzleloader season, late muzzleloader season, first regular gun season, or second regular gun season. No more than 7,500 paid statewide general deer licenses will be sold for the early muzzleloader season. Fifty additional paid early muzzleloader season licenses will be sold through and will be valid only for the Iowa Army Ammunition Plant. There will be no quota on the number of paid general deer licenses issued in the bow season, late muzzleloader season, first regular gun season, or second regular gun season.

106.6(2) Paid antlerless-deer-only licenses. Paid antlerless-deer-only licenses have quotas for each county and will be sold for each county until quotas are reached.

a. Paid antlerless-deer-only licenses may be purchased for any season in counties where licenses are available, except as outlined in 106.6(2)“*b.*” A license must be used in the season, county or deer population management area selected at the time the license is purchased.

b. No one may obtain paid licenses for both the first regular gun season and second regular gun season regardless of whether the licenses are valid for any deer or antlerless deer only. Paid antlerless-deer-only licenses for the early muzzleloader season may only be purchased by hunters who have already purchased one of the 7,500 paid statewide general deer licenses. Hunters who purchase one of the 7,500 paid statewide general deer licenses for the early muzzleloader season may not obtain paid antlerless licenses for the first or second regular gun season.

c. Prior to September 15, a hunter may purchase one antlerless-deer-only license for any season for which the hunter is eligible. Beginning September 15, a hunter may purchase an unlimited number of antlerless-deer-only licenses for any season for which the hunter is eligible, as set forth in 106.6(2)“*b.*” until the county or population management area quotas are filled. Licenses purchased for deer population management areas will not count in the county quota.

106.6(3) November antlerless-deer-only season. Rescinded IAB 7/11/12, effective 8/15/12.

106.6(4) January antlerless-deer-only licenses. Rescinded IAB 8/6/14, effective 9/10/14.

106.6(5) Free landowner/tenant licenses. A person obtaining a free landowner/tenant license may purchase any combination of paid bow and paid gun licenses available to persons who are not eligible for landowner/tenant licenses as described in 571—106.12(481A).

106.6(6) Antlerless-deer-only licenses. Paid antlerless-deer-only licenses will be available by county for the 2014 deer season as follows:

County	Quota	County	Quota	County	Quota
Adair	1025	Floyd	0	Monona	850
Adams	1450	Franklin	0	Monroe	1950
Allamakee	2975	Fremont	525	Montgomery	750
Appanoose	2200	Greene	0	Muscatine	775
Audubon	0	Grundy	0	O’Brien	0
Benton	325	Guthrie	1950	Osceola	0
Black Hawk	0	Hamilton	0	Page	750
Boone	450	Hancock	0	Palo Alto	0
Bremer	650	Hardin	0	Plymouth	0
Buchanan	200	Harrison	850	Pocahontas	0
Buena Vista	0	Henry	925	Polk	1350
Butler	0	Howard	200	Pottawattamie	850
Calhoun	0	Humboldt	0	Poweshiek	300

County	Quota	County	Quota	County	Quota
Carroll	0	Ida	0	Ringgold	2200
Cass	400	Iowa	450	Sac	0
Cedar	775	Jackson	675	Scott	200
Cerro Gordo	0	Jasper	775	Shelby	225
Cherokee	0	Jefferson	1650	Sioux	0
Chickasaw	375	Johnson	850	Story	150
Clarke	2100	Jones	525	Tama	200
Clay	0	Keokuk	450	Taylor	2200
Clayton	2775	Kossuth	0	Union	1500
Clinton	400	Lee	1275	Van Buren	3800
Crawford	150	Linn	850	Wapello	1825
Dallas	1875	Louisa	775	Warren	2200
Davis	2800	Lucas	2200	Washington	750
Decatur	2200	Lyon	0	Wayne	2200
Delaware	525	Madison	2100	Webster	0
Des Moines	800	Mahaska	475	Winnebago	0
Dickinson	0	Marion	1650	Winneshiek	1975
Dubuque	725	Marshall	150	Woodbury	850
Emmet	0	Mills	750	Worth	0
Fayette	1500	Mitchell	0	Wright	0

[**ARC 7921B**, IAB 7/1/09, effective 8/5/09; **ARC 8888B**, IAB 6/30/10, effective 8/18/10; **ARC 0189C**, IAB 7/11/12, effective 8/15/12; **ARC 0830C**, IAB 7/10/13, effective 8/14/13; **ARC 1562C**, IAB 8/6/14, effective 9/10/14]

571—106.7(481A) Method of take. Permitted weapons and devices vary according to the type of season.

106.7(1) Bow season. Only longbow, compound or recurve bows shooting broadhead arrows are permitted during the bow season. Arrows must be at least 18 inches long.

a. Crossbows may be used during the bow season in the following two situations:

- (1) By persons with certain afflictions of the upper body as provided in 571—15.5(481A); and
- (2) By persons over the age of 70 with an antlerless-deer-only license as provided in Iowa Code section 483A.8A.

b. No explosive or chemical devices may be attached to the arrow, broadhead or bolt (if used with a crossbow).

106.7(2) Regular gun seasons. Only 10-, 12-, 16- and 20-gauge shotguns shooting single slugs and muzzleloaders and handguns as described in 106.7(3) will be permitted for taking deer during the regular gun seasons.

106.7(3) Muzzleloader seasons. Only muzzleloading rifles and muzzleloading pistols will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, centerfire handgun, crossbow or bow as described in 106.7(1). Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 caliber or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. Legal handgun calibers are listed on the department of natural resources list of Acceptable Handgun Calibers for Hunting Deer in Iowa. Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Muzzleloading handguns must be .44 caliber or larger, shooting single projectiles only. Crossbow means a weapon consisting of a bow mounted transversely on a stock or frame and designed

to fire a bolt, arrow, or quarrel by the release of the bow string, which is controlled by a mechanical trigger and a working safety. Crossbows equipped with pistol grips and designed to be fired with one hand are illegal for taking or attempting to take deer. All projectiles used in conjunction with a crossbow for deer hunting must be equipped with a broadhead with at least three blades.

106.7(4) *November antlerless-deer-only season.* Rescinded IAB 7/11/12, effective 8/15/12.

106.7(5) *January antlerless-deer-only season.* Rescinded IAB 8/6/14, effective 9/10/14.

106.7(6) *Prohibited weapons and devices.* The use of dogs, domestic animals, bait, rifles other than muzzleloaded or as provided in 106.7(5), handguns except as provided in 106.7(3), crossbows except as provided in 106.7(1) and 106.7(3), automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. “Bait” means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. “Paraplegic” means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle except as provided in 106.7(3) and 106.7(5). It shall be unlawful for a person hunting with a bow license to carry a handgun unless that person also has a valid deer hunting license and an unfilled transportation tag that permits a handgun to be used to take deer.

106.7(7) *Discharge of firearms from roadway.* No person shall discharge a rifle, including a muzzleloading rifle or musket, or a handgun from a highway while deer hunting. In addition, no person shall discharge a shotgun shooting slugs from a highway north of U.S. Highway 30. A “highway” means the way between property lines open to the public for vehicle traffic, including the road ditch, as defined in Iowa Code section 321.1(78).

106.7(8) *Hunting from blinds.* No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 106.2(2), unless such blind exhibits a solid blaze orange marking which is a minimum of 144 square inches in size and is visible in all directions. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term “blind” is defined as an enclosure used for concealment while hunting, constructed either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

[ARC 9717B, IAB 9/7/11, effective 10/12/11; ARC 0189C, IAB 7/11/12, effective 8/15/12; ARC 1562C, IAB 8/6/14, effective 9/10/14]

571—106.8(481A) Procedures to obtain licenses. All resident deer hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses may be purchased from ELSI license agents, or online at www.iowadnr.com, or by calling the ELSI telephone ordering system.

106.8(1) *Licenses with quotas.* All paid deer hunting licenses for which a quota is established may be obtained from the ELSI system on a first-come, first-served basis beginning August 15 until the quota fills, or through the last day of the hunting period for which the license is valid.

106.8(2) *Licenses without quotas.* All deer hunting licenses that have no quota may be obtained from the ELSI system beginning August 15 through the last day of the hunting period for which a license is valid.

106.8(3) *Providing false information.*

a. Any person who provides false information about the person’s identity or eligibility for any paid or free landowner/tenant deer license and tag and who attests that the information is correct by accepting and signing the license or tag shall have the person’s hunting license revoked as a part of the sentencing for such criminal conviction, and the person shall not be issued a hunting license for one year pursuant to the authority of Iowa Code Supplement section 483A.24(2) “f” and rule 571—15.6(483A).

b. In addition to any legal penalties that may be imposed, the obtaining of a license in violation of this rule shall invalidate that deer license and transportation tag and any other deer hunting license and transportation tag obtained during the same year.

571—106.9(481A) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is located after being taken or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person or with a tag that was purchased after the deer was taken. During the youth/disabled hunter season, bow season, early muzzleloader season and late muzzleloader season, the hunter who killed the deer must tag the deer by using the transportation tag issued in that person's name. During the first and second regular gun seasons and the January antlerless-deer-only season, anyone present in the hunting party may tag a deer with a tag issued in that person's name. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

[ARC 9717B, IAB 9/7/11, effective 10/12/11; ARC 0189C, IAB 7/11/12, effective 8/15/12]

571—106.10(481A) Youth deer and severely disabled hunts.

106.10(1) Licenses.

a. *Youth deer hunt.* A youth deer license may be issued to any Iowa resident who is not over 15 years old on the day the youth obtains the license. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free general deer license for which the youth's family is eligible.

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in the direct company of the youth at all times.

A person may obtain only one youth general deer license but may also obtain any other paid or free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner with which other hunters obtain them, as described in 106.6(2).

b. *Severely disabled hunt.* Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one general deer license to hunt deer during the youth season. A person applying for this license must either possess a disability parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). Forms are available online at www.iowadnr.gov, by visiting the DNR office at the Wallace State Office Building or any district office, or by calling (515)281-5918. A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain any other paid and free general deer and antlerless-deer-only licenses that are available to other hunters. Antlerless-deer-only licenses must be obtained in the same manner by which other hunters obtain them, as described in 106.6(2).

106.10(2) Season dates. Deer of either sex may be taken statewide for 16 consecutive days beginning on the third Saturday in September. A person who is issued a youth deer hunting license and does not take a deer during the youth deer hunting season may use the deer hunting license and unused tag during the early muzzleloader, late muzzleloader, and one of the shotgun seasons. The license will be valid

for the type of deer and in the area specified on the original license. The youth must follow all other rules specified in this chapter for each season. A youth hunting in one of the other seasons must obtain a hunting license and habitat stamp or hunt with a licensed adult if required by Iowa Code section 483A.24. If the tag is filled during one of the seasons, the license will not be valid in subsequent seasons.

106.10(3) *Shooting hours.* Legal shooting hours will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

106.10(4) *Limits and license quotas.* An unlimited number of licenses may be issued. The daily and season bag and possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.10(5) *Method of take and other regulations.* Deer may be taken with shotgun, bow or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

106.10(6) *Procedures for obtaining licenses.* Paid and free youth season licenses and licenses for severely disabled hunters may be obtained through ELSI beginning August 15 through the last day of the youth season.

[ARC 1562C, IAB 8/6/14, effective 9/10/14]

571—106.11(481A) *Deer depredation management.* The deer depredation management program provides assistance to producers through technical advice and additional deer licenses and permits where the localized reduction of female deer is needed to reduce damage. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.11(1) *Method of take and other regulations.* Legal weapons and restrictions will be governed by 571—106.7(481A). For deer shooting permits only, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93. The producer or designee must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122.

106.11(2) *Eligibility.* Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nursery stock, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding \$1,000 in a single growing season, or the likelihood that damage will exceed \$1,000 if preventive action is not taken, or a documented history of at least \$1,000 of damage annually in previous years.

c. Producers who lease their deer hunting rights are not eligible for the deer depredation management program.

106.11(3) *Depredation management plans.* Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by depredation biologists in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, and temporary fencing, as well as allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of the measures in (1) above, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds \$1,000.

(3) Depredation permits to shoot deer may be issued to Iowa residents to reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the depredation biologist and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.11(4) Depredation permits. Two types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for the regular deer license fee for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued up to the number specified in the management plan.

(2) The landowner or an eligible family member, which shall include the landowner's spouse or domestic partner and juvenile children, may obtain one depredation license for each season established by the commission. No other individual may initially obtain more than three depredation licenses per management plan. When a deer is reported harvested on one of these licenses, then another license may be obtained.

(3) Depredation licenses will be valid only for hunting antlerless deer, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(4) Hunters may keep any deer legally tagged with a depredation license.

(5) All other regulations for the hunting season specified on the license will apply.

(6) Depredation licenses will be valid only on the land where damage is occurring and the immediately adjacent property unless the land is within a designated block hunt area as described in subparagraph (7). Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

(7) Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation licenses issued to producers within the block hunt area are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt area boundaries. Creation of a given block hunt area does not authorize trespass.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers who have an approved DNR deer depredation plan, and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued at no cost to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops or agricultural crops may be valid for taking deer outside of a hunting season depending on the nature of the damage. The number and type of deer to be killed will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved signs an agreement with the department.

- (5) All deer killed must be recovered and processed for human consumption.
- (6) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.
- (7) Antlers from all deer recovered must be turned over to the conservation officer within 48 hours. Antlers will be disposed of according to department rules.
- (8) For out-of-season shooting permits, there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93.
 - c. Depredation licenses and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.
 - d. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd. This restriction does not apply in situations where shooting permits are issued for public safety concerns.
 - e. A person who receives a depredation permit pursuant to this paragraph shall pay a \$1 fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger (HUSH) program administered by the commission and a \$1 writing fee for each license to the license agent.

106.11(5) Disposal. Rescinded IAB 7/16/08, effective 8/20/08.
[ARC 7921B, IAB 7/1/09, effective 8/5/09]

571—106.12(481A) Eligibility for free landowner/tenant deer licenses.

106.12(1) Who qualifies for free deer hunting licenses.

a. Owners and tenants of a farm unit and the spouse and juvenile child of an owner or tenant who reside with the owner or tenant are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

b. Juvenile child defined. “Juvenile child” means a person less than 18 years of age or a person who is 18 or 19 years of age and is in full-time attendance at an accredited school pursuing a course of study leading to a high school diploma or a high school equivalency diploma. A person 18 years of age or older who has received a high school diploma or high school equivalency diploma does not qualify.

106.12(2) Who qualifies as a tenant. A “tenant” is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner’s family, including in some circumstances the landowner’s spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

106.12(3) What “actively engaged in farming” means. Landowners and tenants are “actively engaged in farming” if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

106.12(4) Landowners who qualify as active farmers. These landowners:

- a. Are the sole operator of a farm unit (along with immediate family members), or
- b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or
- c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or
- d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or
- e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.12(5) *Landowners who do not qualify.* These landowners:

- a. Use a farm manager or other third party to operate the farm, or
- b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.12(6) *Where free licenses are valid.* A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. “Farm unit” means all parcels of land in tracts of two or more contiguous acres that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant regardless of how that land is subdivided for business purposes. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. “Agricultural purposes” includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.12(7) *Registration of landowners and tenants.* Landowners and tenants and their eligible family members who want to obtain free deer hunting licenses must register with the department before the free licenses will be issued. Procedures for registering are described in 571—95.2(481A).

571—106.13(481A) Harvest reporting. Each hunter who bags a deer must report that kill according to procedures described in 571—95.1(481A).

571—106.14(481A) Extension to the regular gun seasons. Rescinded IAB 7/16/08, effective 8/20/08.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.8, 483A.8B, 483A.8C, 483A.24 and 483A.24B.

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